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PART VIII

FEDERAL ENERGY REGULATORY COMMISSION

■

NATURAL GAS POLICY ACT OF 1978

Interim Regulations

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TITLE 18 - CONSERVATION OF POWER AND WATER RESOURCES

CHAPTER I - FEDERAL ENERGY REGULATORY COMMISSION

[DOCKET NO. RM79-3]

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PART 2 - GENERAL POLICY AND INTERPRETATIONS

SUBCHAPTER E - REGULATIONS UNDER THE NATURAL GAS ACT

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INTERIM REGULATIONS IMPLEMENTING THE NATURAL GAS POLICY ACT OF 1978

AGENCY : Federal Energy Regulatory Commission.

ACTION : Interim Regulations.

SUMMARY: The Natural Gas Policy Act of 1978 (NGPA), enacted November 9, 1978, takes effect with respect to certain first sales of natural gas delivered on or after December 1, 1978. The new statutory provisions relating to pricing of natural gas and other issues must, therefore, be implemented by regulation by that date. These regulations implement certain provisions of the NGPA, and are issued as interim regulations.

PUBLIC HEARINGS: Dates and locations to be announced.

DATE : Written comments by January 31, 1979, except as otherwise noted. Effective December 1, 1978, except as otherwise noted.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N. E., Washington, D. C. 20426 (Reference Docket No. RM79-3)

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I. INTRODUCTION

On November 9, 1978, the Natural Gas Policy Act of 1978 (NGPA) was signed into law. By passage of the NGPA, Congress has mandated a new legislative framework for the regulation of most facets of the natural gas industry. The new law affects sales, transmission and distribution of natural gas. The previously controlling federal regulatory statute, the Natural Gas Act (NGA) has in many respects been limited, replaced or superseded by the NGPA, although it continues to be of significance with respect to gas previously dedicated to interstate commerce.

A primary effect of the NGPA is the substitution of a series of specific statutory maximum price levels applicable to discrete types of "first sales" of natural gas for the previously established system of price regulation of interstate sales of natural gas which had been grounded in a cost-based methodology. An important distinction between producer regulation under the NGA and the NGPA is the expansion of the Federal Energy Regulatory Commission's (Commission) jurisdictional scope to encompass not only sales made in interstate commerce but in intrastate commerce as well. Under the NGPA, all first sales of natural gas are controlled by the maximum statutory ceiling rates and as a result, it is unlawful for any person to sell

natural gas at a price in excess of the statutory maximum regardless of whether the sale occurs in the inter- or intrastate market.

The Commission wishes to call specific attention to the provisions of section 101(b)(9) of the NGPA. The Congress, by that provision, emphasizes and makes clear that the maximum lawful prices under the NGPA are ceiling prices and do not supersede or nullify the effectiveness of any contractual agreement to pay a lower price. Therefore, the Commission cautions producers not to assume entitlement to any NGPA ceiling price which is higher than their contract prices.

The Commission is directed to administer essentially all of the NGPA and is authorized to perform any and all acts and to prescribe and issue such rules and orders as it finds necessary or appropriate to carry out its functions under the NGPA. On November 13, 1978, the Commission proposed interim regulations as the first step in implementing the NGPA. These interim regulations, contained in this notice, mark the second step in carrying out the basic responsibilities for implementation and administration of the Act and provide a mechanism for transition from the NGA regulating regime to the NGPA scheme.

The NGPA is divided into six titles:

I. Pricing

A. Price Controls Applicable to Sales of Natural Gas

B. Decontrol of Certain Natural Gas Prices

II. Incremental Pricing

III. Additional Authorities and Requirements

A. Emergency Authorities

B. Other Authorities and Requirements

IV. Natural Gas Curtailment Policies

V. Administration, Enforcement, and Review

VI. Coordination with the Natural Gas Act, Effect on State Laws

The interim regulations prescribed here do not implement all titles under the NGPA. Rather, the regulations propose to deal with those areas demanding the most expeditious treatment.

This first group of regulations is designed to set in motion the new scheme for pricing of first sales of natural gas and to provide mechanisms for implementation of provisions of the NGPA covering certain arrangements for transportation of natural gas. However, before setting out in detail a full description of the specific regulations proposed, a summary of the most salient features of the NGPA, the effect on regulation under the NGA, and a capsule

description of the implementing regulations and corollary modifications of regulations under the NGA, may be useful.

THE LEGISLATIVE SCHEME OF THE NGPA

The nature and scope of Commission regulation of producer sales under the NGPA has been substantially transformed from utility-type regulation of a limited market to what is essentially price regulation of an entire national market. Under the scheme set up by the NGPA, there exist two major categories of first sales: those requiring a prior determination of eligibility to be made by a jurisdictional federal or state agency (within the meaning of the NGPA) before collection of the maximum lawful price and those not explicitly requiring such a determination. A decision as to whether a first sale falls into a category requiring a determination is fundamental. A decision to seek a determination triggers quite different regulatory consequences than a decision not to seek a determination.

Although under certain provisions the Commission may be called upon to return to the cost-based, just and reasonable methodology within the meaning of the NGA in establishing rates in excess of the NGPA ceiling prices, the basic administration of the pricing provisions of the NGPA will be undertaken from an entirely different perspective.

The Commission will no longer inquire into producer costs or set permissible rates of return for producers. Instead, the Commission's focus will center on whether geological information, production history, field records, prior contractual relationships and information of a similar nature support the categorization for pricing purposes claimed by producers.

Another crucial factor in anticipating what regulatory treatment will be accorded producer sales of natural gas is whether gas is "committed or dedicated" for purposes of NGA regulation. The limitations on NGA regulation as a result of enactment of the NGPA will be addressed in another section of this preamble. However, the distinction between gas which is deemed to be subject to continuing regulation under the NGA and gas which falls solely within the NGPA regulatory format is significant and affects both pricing and nonpricing regulation of producer matters.

For categories of gas requiring a prior determination by a federal or state agency, the Commission's function is more in the nature of an appellate body, reviewing, on a substantial evidence basis, the factual determinations of the appropriate jurisdictional agency with the right of disapproval in the event the initial determination is not adequately substantiated. The Commission rules reflect

this role and prescribe the basic and minimum factual foundation necessary to meet its review responsibilities without directly interposing the Commission into the procedural functioning of the jurisdictional agency. The review process of initial determinations begins when notice is received of a jurisdictional agency's determination with the appropriate supporting material specified in Part 274 of the proposed regulations. In the absence of a reversal, the determination of the jurisdictional agency becomes final and no longer subject to review unless based on any untrue statement of material fact or upon any omission of material fact which omission was misleading.

Categories of first sales explicitly requiring that a determination as to qualification to collect the maximum lawful price be made by either a jurisdictional federal or state agency are:

- section 102 which sets a maximum lawful price for first sales of new natural gas (gas produced from a new lease on the Outer Continental Shelf (OCS) or certain new onshore wells) and gas produced from any old OCS lease which was from a reservoir discovered after July 27, 1976;

- Section 103 which sets a maximum price for first sales of new onshore production wells;
- Section 107 which sets a maximum lawful price for first sales of high-cost natural gas including gas produced from geopressurized brine, coal seams, Devonian shale or gas produced under other conditions the FERC determines to present "extraordinary" risks or costs; and
- Section 108 which sets the maximum lawful price for first sales of stripper well natural gas.

An essential element in the regulatory system established with respect to categories requiring a prior determination is the provision for interim collection procedures by producers awaiting a final determination or the outcome of a review of such determination. The Commission has a concomitant power to require refunds from the producer if the gas eventually qualifies for a lower price. Section 503(e) sets out this collection and refunding procedure.

Part 273 of the regulations states the prerequisites for interim collection. First, the Commission has established a "transitional rule" to permit the collection by producers of the section 109 price if a producer files

for a determination by March 1, 1979. Additional rules are established for interim collection pending and following a state or federal agency determination.

Those first sales of natural gas not requiring a prior determination to be made by a jurisdictional federal or state agency are tied to previously existing contractually set prices or price levels established by the Federal Power Commission or this Commission. First sales not requiring a prior determination under the NGPA are:

- section 104 which incorporates by reference the just and reasonable rates established under the NGA for first sales of gas committed or dedicated to interstate commerce on the day before the date of enactment of the NGPA;
- section 105 which establishes maximum lawful prices for first sales under existing contracts of natural gas not previously committed or dedicated to interstate commerce;
- section 106 which establishes maximum lawful prices for first sales under interstate and intrastate rollover contracts; and
- section 109 which establishes the maximum lawful price for first sales of natural gas

from the Prudhoe Bay in Alaska and categories of gas not otherwise covered by other sections of the NGPA.

The Commission has general administrative and enforcement authority under the NGPA and the NGA to order refunds in cases where the maximum lawful price level has been improperly exceeded.

EFFECT OF THE NGPA UPON CONTINUED NGA REGULATION

Natural gas which remains committed or dedicated to interstate commerce on the day before the date of enactment of the NGPA, or which is not specifically exempted from the jurisdictional consequences of commitment or dedication by the NGPA, remains subject to all the non-price regulatory requirements of the NGA. An important aspect of continued NGA regulation is the requirement that a producer file an abandonment application with the FERC pursuant to section 7(b) of the NGA before terminating service to the interstate market or before abandonment of facilities used to render interstate service. Additionally, although price regulation of first sales by producers of gas committed or dedicated is now governed by the NGPA, sections 104 and 106(a) are grounded in previously established rates under the NGA. As a result, producers wishing to establish their

right to collect under these sections will be required to make a filing under their rate schedules under the NGA. The Commission has amended its previously existing filing requirements to provide new procedures governing these rate increase filings.

If gas is not committed or dedicated to interstate commerce as defined in section 2(18) or is exempted from the jurisdiction of the NGA under section 601(a)(1)(B) as high cost natural gas, new natural gas, or natural gas produced from any new onshore production well, the prior framework of utility-type regulation under the NGA no longer applies.

If natural gas sales are freed from the requirements of the NGA, several adjuncts to NGA regulation are obviated. First, there is no longer any necessity for a producer to seek certification of the sale as serving the public convenience and necessity. The replacement for this requirement under the NGPA is limited to the prior determination mechanism, where applicable, and the pricing limits established in the NGPA. New sales of such gas in interstate commerce no longer require certification as a prerequisite to commencement of deliveries. Nor does the requirement for abandonment authorization before termination of deliveries of natural gas exist with respect to natural gas no longer

subject to NGA regulation. In the case of first sales of natural gas not previously committed or dedicated to interstate commerce or exempted from NGA regulation, tariff filings and rate increase applications are dispensed with. (Of course, specific requirements for filing to establish the right to collect the maximum lawful price levels exist under the regulations and annual reporting will be required under the NGPA in many instances. However, the nature of these filings, which are in many cases one-time notification type filings is quite different from the rate filings previously required under the NGA.)

For natural gas which on the date of enactment was committed or dedicated but which is exempted from the NGA under section 601(a)(1) of the NGPA, there are substitute mechanisms for NGA section 7(b) abandonment authorization. These substitute provisions, intended to provide a degree of certainty to purchasers dependent upon a predictable natural gas supply, are found in section 315 of the NGPA. The Commission has not attempted to implement these sections in the initial implementing regulations. It is our intent to do so in the near future. That section gives the Commission dual authority to establish by rule or order the minimum duration of any contract (other than an existing contract) for the purchase of natural

gas and to require by rule the right of first refusal with respect to any gas committed or dedicated to interstate commerce before the date of enactment if such gas is high cost gas, new natural gas or natural gas produced from any new, onshore production well.

Indirectly, NGA regulation is affected by the operation of section 601(b) and (c) of the NGPA. Section 601(b) provides that any amount paid in any first sale of natural gas shall be deemed to be just and reasonable if such amount does not exceed the maximum lawful ceilings established by the NGPA or if there is no maximum lawful price applicable by reason of elimination of price controls. Section 601(c), the guaranteed passthrough provision, states that the Commission may not deny, or condition, the grant of any certificate under section 7 of the NGA based upon the amount paid in any sale of natural gas if the amount paid meets the standards of section 601(b) and is, therefore, by statutory fiat, just and reasonable. Additionally, the Commission may only deny the recovery by any interstate pipeline of any amount paid with respect to the purchase of natural gas under section 601(b) to the extent the Commission determines that the amount paid was excessive due to fraud, abuse, or similar grounds.

Finally, included in the implementing regulations are provisions covering certain transportation arrangements by both interstate and intrastate pipelines. Provision is made for intrastate pipeline sales and for the assignment of natural gas excess to their requirements. Also, the Commission has revised its regulations previously applicable to emergency transactions and revised the procedure and the standards for emergency sales of natural gas for this winter's heating season.

GENERAL OUTLINE OF IMPLEMENTING REGULATIONS

The interim regulations add two new subchapters to the Commission's regulations in Chapter 1 of Title 18. New Subchapter H (Parts 270 through 276) contains the new producer regulations under the NGPA. Part 270 sets forth general rules applicable to the entire subchapter. Maximum lawful prices under NGPA sections 102 through 109 are implemented in Part 271. Part 273 provides for interim collections and refunds, while determinations of eligibility by state and federal agencies and Commission review of those determinations are provided for under Parts 274 and 275. Finally, Part 276 covers reports.

New Subchapter I will cover regulations under the NGPA other than those relating to producer regulation. The interim regulation prescribed today includes only

Part 284, which implements the Commission's authority under sections 311(a) (relating to certain pipeline transportation of natural gas) and 312 (relating to assignment of intrastate pipeline's contractual right to receive surplus natural gas). Regulations relating to other authorities of the Commission will be added later under Subchapter I.

II. SUMMARY OF PROPOSED REGULATIONS

PART 270

Part 270 prescribes rules and definitions that apply to Subchapter H. Subpart A contains the general rules and definitions, and Subpart B contains special rules which relate to sales made under particular conditions.

The general rules of § 270.101 relate to the application of the maximum lawful price provisions of the NGPA. This section makes it unlawful for any person to sell natural gas at a first sale price which is greater than the highest maximum lawful price permitted under Part 271. Thus, if more than one maximum lawful price is applicable to a first sale, the "highest" maximum lawful price may be obtained.

This section also describes the categories of natural gas for which prior determinations by jurisdictional agencies must be made in order to establish the maximum lawful price. In addition, this section reflects the statutory rule that the pricing provisions of Part 271 do not supersede or nullify contract provisions which establish prices below the applicable maximum lawful price. It also provides that collection of a first sale price under Subchapter H is subject to any refund obligation as may be applicable. The refund provision has been modified from the proposal to

recognize the fact that refund obligations may arise as a result of provisions other than those in Part 273.

Comments on the proposed regulations requested additions to the general rules. One comment suggested a rule to protect confidential data submitted pursuant to these new regulations. The Commission, in response to this concern, has added a rule to Subpart B of Part 275 concerning the confidentiality of materials submitted to it as part of a determination by a jurisdictional agency.

Section 270.102 contains definitions. Paragraph (a) provides that unless further defined, terms defined in the NGPA have the same meaning for purposes of these regulations as they do under the NGPA.

The definitions provided under paragraph (b) include basic terms used throughout the regulations and particular terms, such as "production in commercial quantities," "crude oil," "surface location," "intrastate contract," "successor to an intrastate contract," and "intrastate rollover contract," used in more than one subpart. Two of these definitions differ from those which were first proposed: that for "Btu," and that for "production in commercial quantities."

The definition of "Btu," found in clause (2) of paragraph (b), has been amended to conform it to § 270.204. This was done in response to those comments which pointed out a discrepancy between these two sections.

In addition to several minor clarifying changes, the term "production in commercial quantities" has been amended in two major respects. First, in response to those comments which noted the Commission's omission of any reference to the rebuttable presumption in section 102(c)(3) of the NGPA, a citation to a new § 271.204(e), which embodies that presumption, has been included. Also in response to comments, the definition has been modified to make clear that the information in clauses (A) to (E) inclusive, of § 270.102(b)(4)(iii), may be considered evidence of production for beneficial economic use. However, the Commission wishes to point out that these enumerated clauses are not conclusive as to the matter; evidence to show the contrary may be presented by an applicant for a determination.

Several comments proposed that this section be expanded to include certain other terms, including "local distribution company," "intrastate sales," and "first sale." The Commission has determined that definition of these terms is not required at this time.

The table of names and addresses of the jurisdictional agencies has been moved from Part 270 to the new Subpart E of Part 274. In addition, several corrections have been made in the table.

The special rules of Subpart B apply to first sales of natural gas subject to differing maximum lawful prices, resales covered by first sale pricing regulations, sales of natural gas attributable to pipeline or distributor production, and the measurement of Btu content of natural gas.

Section 270.201 provides that the maximum lawful price for a first sale of natural gas produced from wells, properties, or reservoirs which have different applicable maximum lawful prices will be the weighted average of the maximum lawful prices applicable to each well, property or reservoir. The weighted average will be based upon the volumes of gas contributed by each such well, property or reservoir.

Section 270.202 applies to "resellers." The section provides that one who purchases natural gas at a first sale and subsequently resells the gas in a transaction which is also a first sale may collect a maximum lawful price which is the higher of either: (1) the maximum lawful price

which would apply to such a sale under Part 271 if it were not a resale; or (2) the maximum lawful price which was applicable to the transaction in which the reseller purchased the natural gas. A rule similar to § 270.201 applies to any sale by a reseller of volumes purchased subject to different maximum lawful prices.

Paragraph (c) of the rule contains two provisions applicable to allowances under Subpart K of Part 271. First, the reseller may collect the applicable maximum lawful price on his sale plus any allowances permitted by the Commission under the provisions of Subpart K of Part 271. Second, if the reseller's maximum lawful price is determined under § 270.202(a)(2) by reference to the maximum lawful price of the person selling to him, the reseller may pass through any Subpart K allowances which the person selling to him collected. In addition, under § 270.202(d), a reseller may apply to the Commission for adjustment relief pursuant to section 502(c) of the NGPA, to the extent the application of the reseller provisions results in hardship, inequity, or an unfair distribution of burdens.

Section 270.202 also spells out the manner in which the interim collection rules apply to resellers and sets out rules respecting reporting and record retention. With regard to reporting requirements, it should be pointed out that

resellers must make reports of their first sales under Part 276 in the same manner as other first sellers.

Significant modifications in the reseller rule as proposed were made in response to comments received by the Commission, in particular in its treatment of allowances under Subpart K of Part 271. The comments pointed to the possibility of a reseller's being "squeezed" between applicable prices at which he purchased and those at which he could sell. These comments suggested that the Commission explicitly provide for allowances such as the current gathering allowances permitted to interstate production and those afforded producers under Subpart K of Part 271. In addition, suggestions were made that the regulation provide for some form of margin protection to resellers. While the Commission declines to go so far as to guarantee existing margins, we believe that, as presently constructed, this regulation meets the concerns expressed by those who commented upon the proposed rule. The result, especially with the changes made respecting reseller allowances and passthrough of allowances, and with the provision for adjustments under section 502(c) of the NGPA, should provide for equitable treatment of resellers. It should be noted that changes in Subpart K of Part 271 have also been made.

Section 270.203 relates to pipeline and distributor production. Section 2(21)(B) of the NGPA provides that a sale of natural gas by a pipeline or distributor (or an affiliate thereof) is not a first sale unless the sale is "attributable to volumes of natural gas produced" by such pipeline or distributor (or an affiliate thereof). Section 270.203 describes the circumstances under which a sale of natural gas will be considered to be a first sale of natural gas attributable to volumes produced by a pipeline or distributor. To the extent a sale is comprised exclusively of production volumes from identifiable wells, properties, or reservoirs which are owned by the pipeline or distribution company or affiliate thereof making the sale, then it is attributable to volumes of natural gas produced by that pipeline or distributor.

For example, if a pipeline sells to a particular customer production volumes from a well which it owns, the volumes are commingled with system supply, and equivalent volumes are withdrawn for delivery to that customer, then the transaction would be a sale comprised of production volumes from a particular well, and thus a first sale.

In order to prevent circumvention of this rule, a provision is made pursuant to the Commission's authority under section 2(21)(A)(v) of the NGPA, that mixed-volume

sales comprised of both production volumes from identifiable wells, properties, or reservoirs owned by the pipeline or distributor/seller and of other production volumes will be considered as a first sale, unless one of the two exclusions under the rule applies. The first exclusion provides that if the rate at which such natural gas is sold by the pipeline or distributor is regulated under the NGPA or subject to regulation by a state agency under state law, then the sale will not be considered to be a first sale by reason of the "circumvention rule." (To qualify for the state regulation exemption, the sale must be subject to regulation by a state agency empowered by state statute to establish, modify or set aside the rate for the sale.) The second exclusion provides that the sale will not be considered as a first sale if, on application to the Commission, a determination has been made not to so treat the sale.

The effect of § 270.203 on sales made by an interstate pipeline of volumes of natural gas produced by it, is to continue resale rate regulation under the provisions of the NGA.

While some comments were received calling the Commission's attention to intracorporate transfers, the Commission will not specifically deal with this question without receiving further comment. Unless the Commission otherwise

provides, intracorporate transactions by interstate pipelines will continue to receive the treatment presently accorded them under the NGA.

The Commission should note at this point the relationship of section 602(a) of the NGPA to the attribution and circumvention rules set out in § 270.203. Section 602(a) states that nothing in the NGPA limits the authority of a state to establish or enforce a maximum lawful price for the first sale of natural gas produced in the state, provided the price set does not exceed any appropriate maximum lawful price under Title I of the NGPA.

Comments were received that indicate certain states have authorized their regulatory body to set or impute a price on the basis of fair value or reasonable market price for the sale or transfer to an intrastate pipeline by its producing affiliate or production department. These state-set values may be below the applicable NGPA ceiling price.

Nothing in § 270.203 or the NGPA precludes a state agency from establishing a ceiling price for a sale of gas by an intrastate pipeline affiliate to an intrastate pipeline at a rate which is lower than the NGPA ceiling price. Likewise, a state agency may impute a price for

an intracorporate transaction involving intrastate pipeline production which is lower than the NGPA ceiling price. Some comments received by the Commission interpreted the proposal as one which, contrary to the NGPA, worked to exclude all sales of pipeline-produced natural gas from the provisions of the NGPA. Others interpreted the proposed rule as one which would continue, where applicable, cost-of-service regulation subject to the maximum lawful pricing provisions of the NGPA. Still others, notably intrastate producer pipelines, pointed out cases where state regulation does not take the form of cost-of-service or average cost regulation.

We disagree with those comments that concluded that the Commission is without authority to determine the extent to which sales by pipelines and distribution companies are "attributable" to production by these entities, or their affiliates. Under a broad reading of this section, arguably all sales of natural gas by pipelines and distribution companies would be "first sales" where any volume of natural gas was produced by that pipeline, distribution company or an affiliate. Under such a reading, a substantial portion of retail sales by pipelines and distribution companies would be subject to the provisions of the NGPA. Moreover

under such a broad reading of the "first sale" definition, it could be asserted that the provisions of the NGA would not apply to jurisdictional sales by interstate pipelines by reason of section 601 of the NGPA.

Applying the provisions of Title I of the NGPA, particularly section 104, to "first sales" by interstate pipelines under such a broad reading would entail a major restructuring of pipeline regulation under the NGA. Retail sales by intrastate pipelines and distribution companies, which are traditionally regulated by the states, would also be subject to the provisions of Title I of the NGPA and the Commission's authority. Such incongenous results were clearly not intended by the legislative draftman.

For these reasons we have concluded that sales by pipelines and distribution companies should only be considered to be "attributable" to production by pipeline distributors where the sale is of production from identifiable wells, properties or reservoirs owned by such pipelines (or distributor or affiliates thereof) to an identifiable purchaser. In order to prevent circumvention of this rule by pipelines or distributors who sell volumes of production by others together with volumes produced by them, the Commission has found it necessary to exercise its authority under section 2(21)(A)(v) of the NGPA, to

impose first sale price regulation on these "mixed" sales where the price is not otherwise subject to regulation or where the Commission affirmatively finds that first sale regulation is unnecessary.

Section 270.205 incorporates discussion at page 83 of the Statement of Managers which relates to the effect of establishment of ceiling prices under the NGPA on indefinite price escalator clauses in existing contracts. As discussed there, the mere establishment of NGPA ceiling prices will not trigger these clauses. The special rule is consistent with that discussion which is equally applicable to existing intrastate and interstate contracts. The phrase "indefinite price escalator clause" is defined for purposes of this special rule by reference to the definition in Section 105(b)(3)(B). Good cause exists to incorporate this special rule in the interim regulations given the uncertainty that would result absent a provision which provides guidance to the parties to those contracts.

PART 271 - SUBPART A

Subpart A of Part 271 sets out, in summary tables, the pricing provisions applicable to certain categories of first sales of natural gas delivered in the months of December 1978 and January 1979. It also provides the method and the inflation adjustment factors to be used for calculating maximum lawful prices for those categories of natural gas for which prices cannot be derived from the summary tables. These latter categories are ones for which maximum lawful prices must be calculated by the seller.

Section 271.102 sets out the methodology by which certain maximum lawful prices are to be calculated. The procedure involves adjustment for inflation and requires only simple multiplication. The price for a given month is calculated by multiplying (1) the price which was allowed for the sale of natural gas delivered in the preceding month, by (2) a single adjustment factor which is published by the Commission. The adjustment factor, referred to as the "monthly equivalent of the annual inflation adjustment factor" in the NGPA, and "inflation adjustment" in the interim regulation, is computed by the Commission under the method of calculation prescribed by

section 101(a) and (b) of the NGPA. The inflation adjustment for each month after April 1, 1977, appears in Table III in § 271.102. This adjustment will be published by the Commission at least 5 days before the beginning of any month for which the factor will apply.

The first price from which all maximum lawful prices under § 271.102 are to be calculated is referred to as a "base price." This price varies according to the category of natural gas for which a calculation is to be made. Once this price is known the calculation can proceed, month-to-month, until the applicable monthly maximum lawful price is determined.

By way of example, assume that a calculation is to be to be made to determine the December 1978, maximum lawful price for natural gas subject to § 271.402(d)(1) for which a just and reasonable rate of $1.00 was in effect on April 20, 1977. First the "base month" and "base price" must be determined. These are determined under §271.102(d) to be April 1977, and $1.00 respectively. Second, a calculation for May 1978, is made. This is done by multiplying $1.00 by 1.00636, the inflation adjustment for May 1977, as presented in the table accompanying § 271.102(c). The result, rounded to the nearest mill, is $1.006. Next, the process is repeated for June 1978 by multiplying the $1.006

figure by 1.00636, the inflation adjustment for June. The product, again rounded to the nearest mill, is $1.012. This figure is then multiplied by the inflation adjustment for July 1977 (1.00431) and so on through the monthly iterations. The result should be a price of $1.115 for the month of November 1978. At this point, the maximum lawful price applicable for deliveries made in December 1978, can be determined. This is done by multiplying the November figure of $1.115 by 1.00581, the factor which applies for December. The result is a maximum lawful price of $1.121 for deliveries made during December 1978.

This example is chosen to illustrate the calculation which § 271.402 will require of some sellers. Sellers subject to either the § 271.502 or § 271.602 pricing provisions will be entitled to prices based on the contract price per MMBtu on November 9, 1978, or in the case of rollover contracts, the month in which the rollover occurs. In either event, only a single multiplication need be made to determine the next month's maximum lawful price.

PART 271 - SUBPART B

Subpart B of Part 271, which implements section 102 of the NGPA, establishes a maximum lawful price for "new natural gas" and for "natural gas produced from a new OCS reservoir on an old OCS lease." These terms are defined by reference to the NGPA.

Section 271.204(a) is a special rule for vertical measurement of the 1,000 foot distance between completion locations necessary for certain determinations under this subpart. The rule also clarifies the measurement methodology for completions made by perforation and for "open-hole" completions.

Section 271.204 also provides special rules regarding the statutory terms "capable of producing in paying quantities," "commercially producible," "suitable facilities," and "production in commercial quantities."

Comments suggested the term "reservoir" be defined in § 271.203. Section 270.102(a) of the regulations provide that the NGPA statutory definitions are incorporated by reference in the regulations. The term reservoir is defined in section 2(6) of the NGPA.

Comments suggested several modifications to the special rules in § 271.204. Specifically, comments directed toward § 271.204(a) suggested an alternate method of measuring

vertical depth, viz. from the lowest perforation point in the marker well to the highest perforation point in the new well completion location. Further comments suggested that measurement of open-hole completions should be from the total depth of the marker well to the highest point of the new well reservoir. The Commission has considered this suggestion and has decided for reasons of ease of measurement and consistency, not to change the special rule. However, in response to some comments, the rule regarding vertical measurements has been changed to make clear that for open-hole completions, measurements are from the highest elevation point of the reservoir "within the well bore."

Several comments sought modification of the special rule regarding "commercially producible" arguing that section 102(d)(2)(B)(ii) of the NGPA requires a determination based upon the producing characteristics of the reservoir. The Commission has found no basis for concluding that the term "commercially producible" has a meaning different from "production in commercial quantities." The latter term is defined in § 270.102(b)(4) of the regulations.

Other comments suggested that the language in § 271.204(d), which provides that suitable facilities were in existence if such facilities were "substantially installed and additional facilities necessary for such production and delivery were readily available," should be deleted or modified. It is the Commission's position that the statutory term "suitable facilities" includes facilities which were installed or substantially installed, if any additional facilities necessary for production and delivery were readily available. However, the section has been modified, in response to comments, to make clear that unless suitable facilities were actually in place, such facilities will not be considered to be "readily available" unless the additional facilities could have been installed in time to allow production and delivery to commence prior to April 20, 1977.

Finally, in response to other comments, § 271.204(d) has been modified to reflect the statutory provisions that facilities installed solely for purposes of sales under section 6 of the Emergency Natural Gas Act of 1977, or for the purposes of 60-day emergency sales are not "suitable facilities" within the meaning of section 102 of the Act.

PART 271 - SUBPART C

Subpart C of Part 271 implements section 103 of the NGPA and establishes a maximum lawful price for first sales of natural gas from new, onshore production wells. Section 271.303 defines a "new, onshore production well" in accordance with the statutory definition in section 103(c), as one spudded on or after February 19, 1977, which complies with applicable well-spacing requirements, and is outside an existing proration unit. Wells which do not comply with applicable well-spacing requirements or are drilled within an existing proration unit do not qualify for the new, onshore production well price unless the requirements of the special rule set out in § 271.304 are met. Section 271.304 makes clear that if a jurisdictional agency grants a waiver of well-spacing requirements prior to commencement of surface drilling, the new well is deemed to satisfy applicable well-spacing requirements.

The special rule in § 271.305 is divided into two parts. The first part, paragraph (b) of § 271.305, provides that for wells spudded after December 31, 1978, the requirements of section 103(c)(3) of the NGPA can only be satisfied if the jurisdictional agency finds that the

well is necessary to effectively and efficiently drain a portion of the reservoir covered by the proration unit, which portion of the reservoir cannot be effectively and efficiently drained by any existing well within the proration unit. Such a finding must involve a redefinition or alteration of the proration unit, or an exception to otherwise applicable well-spacing requirements.

Paragraph (c) of the rule recognizes that some wells drilled between February 19, 1977, and January 1, 1979, may qualify for the price established in section 103. The rule permits such wells to qualify if the agency which authorized the drilling of the new well explicitly or implicitly made the finding, prior to commencement of the drilling of the well, that the new well was necessary to effectively and efficiently drain a portion of the reservoir covered by the proration unit, which portion of the reservoir could not be effectively and efficiently drained by any existing well within the proration unit. Similar treatment is accorded certain wells for which drilling permits are issued prior to January 1, 1979.

Numerous comments requested that the applicability of the special rule in § 271.305 be clarified. The special rule only applies to a second well drilled in

an existing proration unit. If there is no proration unit in existence and applicable to the reservoir, or if there is no well drilled in the existing proration unit to the reservoir, the special rule does not apply. Paragraph (a) of the special rule regarding the applicability of the rule has been revised to clarify this point.

Several comments requested a transition period during which jurisdictional agencies may develop procedures necessary to make the explicit finding required by § 271.305(b). The Commission recognizes the need to permit a sufficient transition period. Paragraph (b) now applies to "wells spudded after December 31, 1978," and paragraph (c) now applies to "wells spudded on or after February 19, 1977, and before January 1, 1978."

Many comments questioned whether the finding that the new well is necessary to effectively and efficiently drain a portion of the reservoir covered by the proration unit which cannot be effectively and efficiently drained by any existing well within the proration unit must be made prior to the commencement of drilling. Comments stated that this requirement would cause drilling delays or make it impossible to obtain a new, onshore production well determination for wells drilled prior to the date of

enactment. The Commission believes that the statute requires that the necessary finding be made prior to the commencement of drilling. Consequently, this aspect of the special rule in § 271.305 remains unchanged.

PART 271 - SUBPART D

Subpart D of Part 271 implements sections 104 and 106(a) of the NGPA. These sections prescribe the maximum lawful price for the first sale of natural gas which was committed or dedicated to interstate commerce on November 8, 1978, and for which a just and reasonable rate under the NGA was in effect. Under section 104, the maximum lawful price is the just and reasonable rate for each vintage of gas established by the Commission as of April 20, 1977, as adjusted monthly for inflation from that date forward. Just and reasonable rates established by the Commission after April 20, 1977, constitute the ceiling rates under section 104 and are not generally adjusted for inflation. Section 106(a) prescribes the maximum lawful price for rollover contracts executed after November 9, 1978.

The interim regulations set forth the maximum lawful price applicable to each vintage of gas and define the various vintages of gas established by the Commission's national or area rate opinions. Rules for calculating the maximum lawful price applicable to natural gas for which a nonvintage just and reasonable rate was not previously established under special relief and optional procedures are also included in this subpart.

Section 271.402(a) of Subpart D includes a table of maximum lawful prices for each vintage of previously committed or dedicated natural gas. Transition from the Natural Gas Act prices to the NGPA prices affects two of the prices included therein differently from other categories. First, the price established in section 106(a) of the NGPA for sales by small producers of rollover contract gas is less than the rate such producers would have received for the same category of gas under the Natural Gas Act. Pursuant to § 157.40(c)(1) of this chapter, small producers were entitled, under the Natural Gas Act, to 130% of the maximum base rate established by the Commission for replacement contracts. Thus, for replacement contracts entered into prior to November 9, 1978, section 104 of the NGPA, which is keyed to the rates previously established by the Commission, prescribes a rate reflecting this 30% differential for sales by small producers. However, for contracts rolling over on or after November 9, 1978, section 106(a) prescribes a rate of 54 cents per MMBtu, as adjusted for inflation from April 20, 1977, for both large and small producers. As a result of this anomaly, a small producer who executed a replacement contract prior to November 9, 1978, would be entitled to a rate of 77.1 cents per MMBtu as of December 1, 1978, whereas a small producer who executed a rollover contract on or after

November 9, 1978, would be entitled, under section 106(a), to a rate of 60.3 cents per MMBtu.

In order to prevent a small producer from receiving a rate under the NGPA lower than that to which he would be entitled under the Natural Gas Act, the Commission finds it necessary to invoke our authority under section 106(c) of the NGPA. This section provides that the Commission may prescribe a maximum lawful price higher than would otherwise be applicable under section 106 if such higher rate is determined to be just and reasonable within the meaning of the Natural Gas Act. The Commission finds, pursuant to this section, that the rate previously established by the Commission for small producer replacement contract gas is just and reasonable within the meaning of the Natural Gas Act, and should be made applicable to small producer sales of rollover contract gas. The price so determined is 70.2 cents per MMBtu as of December 1, 1978. This price may be increased, in accordance with Opinion Nos. 770, et seq. and Opinion Nos. 742, et seq., by an amount not to exceed 1.3 cents per MMBtu per annum commencing on January 1, 1979, and the first day of every year thereafter for the term of the contract dedicating the subject gas for sale in interstate commerce.

We note that this price is still not identical to the 77.1 cents per MMBtu price prescribed in the table for small producer sales of replacement contract gas. The price in the table was determined by adjusting for inflation the April 20, 1977, price of 68.9 cents per MMBtu established by the Commission for replacement contract gas. We invite the submission of data, views and arguments on or before December 15, 1978, regarding the question whether, under the standard set forth in section 106(c), the 70.2 cents per MMBtu rate applicable to small producer rollover contracts should be found not just and reasonable, and the just and reasonable rate should be raised to the 77.1 cents per MMBtu rate as adjusted for inflation in months following December 1978.

One commenting party argues that the Commission has exceeded its authority in raising the small producer rollover contract rate to 70.2 cents per MMBtu. The comment alleged that by not mentioning small producers in section 106(a), Congress intended to eliminate the small producer differential for rollover contract gas. We disagree. The Commission believes the intent of Congress, as expressed in sections 104 and 106(a) of the NGPA, was to key the price of previously committed or dedicated gas to the prices previously determined by the Commission to be

just and reasonable under the Natural Gas Act. Accordingly, we believe that the failure of section 106(a) to mention small producers was inadvertent rather than intentional. In any event, the Congress clearly provided the Commission with the authority, under section 106(c), to prescribe a just and reasonable rate for small producers selling rollover contract gas which is higher than that provided in section 106(a).

A second transition problem exists regarding the large producer rate for rollover contracts prescribed in section 106(a). Such rate is determined by applying the inflation adjustment factor to an April 1977 rate of 54 cents per MMBtu in order to arrive at a December 1, 1978, rate of 60.3 cents per MMBtu. However, the large producer rate for replacement contracts was 53 cents as of April 20, 1977, which when adjusted for inflation translates to a rate of 59.3 cents per MMBtu as of December 1, 1978. Again, we note that the only difference between a replacement contract and rollover contract is that the latter is executed on or after November 9, 1978. In view of this disparity in treatment for the same types of sales of natural gas, we invite the submission of data, views and arguments on or before December 15, 1978, regarding the question whether, under

the standard set forth in section 104(b)(2), the large producer replacement contract rate of 59.3 cents per MMBtu should be found not just and reasonable, and the just and reasonable rate should be raised to the 60.3 cents per MMBtu rate for large producer rollover contracts.

Under § 271.402(d)(2) of these regulations, any "just and reasonable" rate established by the Commission for a sale of natural gas after April 20, 1977, and prior to November 9, 1978, is the maximum lawful price applicable to such sale if higher than the otherwise applicable price prescribed in § 271.402(a) or (d)(1). As to producer applications under the optional procedure regulation set forth in § 2.75 of this chapter, a "just and reasonable" rate is that rate established by the Commission in its final order on such applications. However, the holder of a certificate issued by the Commission under the optional procedure was required to waive the right to receive the applicable national and area rates and other rights under section 4 of the Natural Gas Act and regulations thereunder, we do not believe that the inflation adjustment should apply to rates established under the optional procedure.

Under § 271.403 of these regulations, we have provided a special rule regarding a carrying charge adjustment for advance payments. In Opinion No. 770-A, the Federal Power

Commission recognized that capital generated through the advance payment program was no longer required to bring additional gas supplies to the interstate market. The Commission noted that the rate level set forth in that opinion was designed to achieve the capital formation objective. Accordingly, the Commission found that as to additional advance payments made after the issuance of that opinion, it would be inequitable to require consumers also to pay the carrying charges on these amounts.

The Commission determined that producers who accept advance payments after the date of the opinion should reduce the rate prescribed therein for post-1974 gas which was committed under any further advance payments by the cost of the advances borne by consumers.

Because of these same considerations, we have provided in § 271.403 for the same adjustment in the rates charged by producers for post-1974 gas. Producers subject to this carrying charge rule would be required to reduce their rates by 83 cents per MMBtu for all deliveries made pursuant to the applicable advance payment agreement until the total amounts so deducted equal the amounts collected by the purchasing pipeline from its customers as a result of including the applicable advance payments in their rate base.

Several parties commented that § 271.402(a) should include a reference to the minimum rate of 18 cents per Mcf prescribed by § 2.56b(b) of this chapter. These parties also stated that this 18 cents per Mcf minimum rate be adjusted for inflation as provided for in section 104(b)(1)(A).

We agree that the 18 cents per Mcf minimum rate should be included in the table of rates set forth in § 271.402(a) and should be adjusted for inflation as provided in section 104(b)(1)(A). Accordingly, we have added a new category to the table of rates set forth in § 271.402(a) which is entitled "minimum rate gas." Also, we have added a new subparagraph (9) to § 271.402(c) which defines this term.

Several comments were received regarding the "small producer" definition set forth in § 271.402(c)(9). One comment suggested that the definition be expanded to include a crossreference to § 157.40, the current regulation governing sales made by small producers. Specifically, this comment requested that it be made clear that the small producer rates established under sections 104 and 106(a) should only be applicable to sales from "small producer reserves" as defined in § 157.40. In order to clarify this matter, we have deleted the definition of small producer and, in its place, provided a definition of "small

producer sales" which references the requirements of § 157.40 under which such sales may qualify for the small producer rate.

One comment recommended that we amend the definition of small producer to permit the small producer exemption to apply even where the producer is a director of a class A pipeline company and the producer makes no sales to such pipeline company. This prohibition against affiliation with a class A pipeline company was incorporated in the current small producer regulations set forth in § 157.40 as promulgated by Order No. 568. __/ On rehearing of Order No. 568, the issue presented in this comment was raised. Since this issue is more appropriately raised in the context of Order No. 568, we shall address it on rehearing of that order.

Finally, a comment was received recommending that small producers be defined by reference to the level of sales in both the inter- and intrastate markets, because the NGPA abolished this distinction between the markets. However, the small producer definition set forth in § 271.402(c)(9) is only applicable to sales of natural gas which was previously committed or dedicated to interstate commerce, and the maximum lawful prices established for such gas are based

__/ Order Amending and Clarifying Small Producer Regulations, Docket No. RM76-15, issued July 14, 1977.

on the just and reasonable rates previously established by the Commission. Accordingly, the small producer exemption which is provided for under the Commission's current pricing regulations and which is based solely on the level of interstate sales, should be maintained. To include intrastate sales in the exemption rule would mean that certain producers would receive a rate under the NGPA lower than that to which they would be entitled under the Natural Gas Act, a result clearly not intended under sections 104 and 106(a).

One party indicated that the term "replacement contract" as used in § 271.402(c)(4) should be clarified in that it may be confused with the term "successor to an existing contract" under section 2(14) of the NGPA. No further clarification in the regulations need be made because the two terms are distinguishable on their face. First, "successor to an existing contract" means a contract executed on or after November 9, 1978, whereas a "replacement contract" refers only to contracts executed prior to that date. Also, a replacement contract also differs from a "successor to an existing contract" in that it refers only to contracts for the sale of natural gas which was previously subject to an existing contract which expired by its own terms.

PART 271 - SUBPART E

Subpart E of Part 271 implements section 105 of the NGPA by setting forth the procedure for determining the maximum lawful price for first sales of natural gas under existing, or successors to existing, intrastate contracts. No prior Commission approval is required in order to collect the maximum lawful prices established in this subpart. Persons making sales under existing intrastate contracts need only file reports as provided in Part 276. "Existing intrastate contracts" are defined in § 270.102(b)(8) to be any intrastate contracts for the first sale of natural gas in existence on November 8, 1978.

Although throughout the proposed regulations the reference is to intrastate contracts, it should be noted that these provisions apply to contracts which govern the sale of natural gas which was not committed or dedicated to interstate commerce on November 8, 1978, (the day before the date of enactment of the NGPA). Included in this category is any gas which was sold in interstate commerce under an emergency sale, a limited term certificate, and certain direct sales for which specific transportation certificates had been issued by the Commission.

Under Subpart E of the proposed regulations, the maximum lawful prices depend upon the relationship that existed on November 9, 1978, between the price under the terms of the existing intrastate contract and the new natural gas price. Under § 271.502(a), if the existing intrastate contract price was less than the new natural gas price, then the maximum lawful price will be, pursuant to section 105(b)(1) of the NGPA, the lower of the new natural gas price of $2.060 per MMBtu or the price under the terms of the existing intrastate contract on November 9, 1978, (as such price may be changed from time to time in accordance with contract terms in effect on November 9, 1978). Under § 271.502(b), if the existing intrastate contract price exceeded the new natural gas price of $2.060 per MMBtu on November 9, 1978, then the maximum lawful price will be the higher of the new natural gas price or the existing intrastate contract price limited to escalation by the monthly equivalent of the annual inflation adjustment factor.

The term "contract price" is defined in § 271.504 to mean the price per MMBtu charged for deliveries of natural gas occurring on November 9, 1978, or the price that would have been charged had deliveries occurred on that date.

Comments were received from various parties concerning our use of the phrase "contract price" in § 271.502(a)(1). They asserted that its use in that paragraph caused confusion as to whether future contractually authorized fixed or indefinite price escalator clauses, including price redetermination provisions, operate to effect price increases. The commentors fear that an interpretation more restrictive than required by the legislation would apply in the case of § 271.502(a)(1). One commentor therefore suggested that § 271.502(a)(1) be revised to track the statutory language in section 105(b)(1)(A) of the NGPA to refer to the "price under the terms of the existing contract." We agree and we have revised § 271.502 (a)(1) to track the appropriate statutory language. This change should allay the apprehensions of those commentors who feared that fixed or indefinite price escalator clauses in contracts were abrogated by § 271.502(a)(1).

One comment suggested adding a new section which would provide, inter alia, that the mere establishment of ceiling prices under the NGPA shall not trigger indefinite price escalator clauses in existing intrastate contracts. Only prices actually paid for sales actually made under the NGPA would trigger such clauses. This is similar to

language at page 83 of the Joint Explanatory Statement of the Committee on Conference and reflects, in our opinion, the general intent of Congress with respect to sales under all existing contracts, whether inter- or intrastate. Accordingly as discussed above, we have added a new section 270.205 which provides that the establishment of maximum lawful prices under the NGPA shall not trigger "indefinite price escalator provisions," as defined in the NGPA in either existing intrastate or interstate contracts.

A comment suggested that § 271.502(a)(2) should be revised to allow the § 271.802 stripper well maximum lawful price to apply, instead of the new natural gas price, in any case where there is no contract price for such month or when prices for life-of-well contracts are established from time to time by price lists published by the buyer. We do not find merit in this suggestion. Section 105(b)(1)(B) is quite specific and only provides for the new natural gas rate. However, we have altered the language of § 271.502(a) slightly in order to make clear that that section applies in any case where there is no contract price established on November 9, 1978.

Another comment asserted that the previous language of § 271.504, respecting take-or-pay clauses, may lead to undue burdens where the purchaser has not made payments under a

take-or-pay clause or where the parties to the contract have not calculated the volumes to be taken under such clause. It was suggested that the last sentence of § 271.504, dealing with take-or-pay clauses, should either be eliminated or revised. We concur and have established a special provision in paragraph (b) of § 271.505 concerning the effect of take-or-pay clauses which incorporates the commentor's suggested revision. However, we wish to emphasize that this rule is to apply only with respect to the determination of "contract price" on November 9, 1978. It does not apply with respect to any other date (except to the extent the maximum lawful price is determined by reference to the contract price on such date).

Another comment sought clarification of the right to collect a contract price under § 271.502 that exceeds the new natural gas price solely because of the inclusion of contractually authorized payments for state severance taxes allowed under § 110 of the NGPA. No modification of Subpart E is required. The rules for determining adjustments for state severance taxes are found in Subpart K of this part.

Uncertainty was also expressed as to whether regulations under Subpart K would cause a roll-back of the contract price to less than $1.00 per MMBtu in a case where

it exceeds $1.00 per MMBtu because of reimbursement for state severance taxes. No such "roll-back" would occur if the severance tax provision was in the existing intrastate contract and effective as of November 9, 1978. No revision of Subpart E is required to reflect that fact.

Subpart E sets forth a special rule limiting the effects of modifications of contract terms executed after November 9, 1978. Section 271.505 has been revised to provide in paragraph (a)(1) that no such modification may have the effect of requiring the purchaser to bear any production-related costs which were allocated to the seller under the terms of the existing contract. We have also added a new paragraph (b) which clarifies that paragraph (a) does not preclude contract modifications in the limited circumstance in which a purchaser who was not a party to the existing intrastate contract agrees to bear responsibility to pay for increased production-related costs. The costs contemplated in this new paragraph are those necessary to enable the new purchaser to take delivery of the natural gas subject to the existing contract. We have made this revision in response to a comment pointing out that a new pipeline purchaser may have to install facilities to permit deliveries into its system which would be prohibited under a literal reading of this section. Paragraph (a)(2) of

§ 271.505 stipulates that no such modification may provide for an earlier date for deliveries than that provided for in the existing contract.

The previous paragraph (b) of § 271.505, which has now been deleted, provided that no modifications to existing successors to existing intrastate contracts may alter the terms of such contract to provide for a higher price. It was suggested that there was an ambiguity created by paragraph (b) respecting the right of parties to amend existing intrastate contracts where the sales under those contracts otherwise qualify for maximum lawful prices under another subpart of Part 271, and as to whether amendments relating to state severance taxes or production-related costs allowed under § 110 of NGPA are not considered part of the ceiling price. We have deleted the former paragraph (b) of § 271.505 that would have precluded such modifications and have restricted the scope of that section to Subpart E. The Commission wishes to study the matter further before specifying the latitude parties have to effect bilateral modifications to the terms of contracts in existence on November 9, 1978, and invites further comments thereon. Interpretation of contracts remains an initial responsibility of parties thereto.

PART 271 - SUBPART F

Subpart F of Part 271 implements section 106(b) of the NGPA. Subpart F applies to first sales of natural gas under intrastate rollover contracts, and sets forth the procedure for determining the maximum lawful price applicable to such sales.

Tables are provided in the regulation for the prices permitted to be charged under section 106(b)(1) and section 106(b)(2). As is the case with sales qualifying under Subpart E, persons who sell gas pursuant to intrastate rollover contracts may collect the maximum lawful prices without prior Commission approval. Reporting requirements with respect such sales are found in Part 276.

The maximum lawful price under Subpart F for first sales of natural gas under section 106(b)(1) of the NGPA is the higher of (a) the maximum price under the expired intrastate contract in the month of expiration as escalated by the monthly equivalent of the annual inflation adjustment factor, or (b) $1.00 per MMBtu escalated from April 1977 by the same inflation adjustment. Section 271.602(b) provides for the maximum lawful price for natural gas which may be charged for a certain state or an Indian tribe's natural gas production interests under section 106(b)(2) of the NGPA.

Subpart F also contains a special rule similar to the rule in § 271.505. Section 271.604 provides that no intrastate rollover contract may have the effect of shifting to the purchaser, production-related costs which were allocated to the seller under the expired contract.

We received one comment asserting that § 271.505 as proposed might have an adverse effect on interstate pipelines seeking to gain intrastate natural gas. The commentor suggested that § 271.505 should not operate to preclude intrastate rollover contracts from requiring the purchaser to bear costs of installing facilities necessary for the purchaser to take physical delivery of the gas. We have added a new paragraph (b) to this section which provides that a new purchaser may agree to incur increased production-related costs if such costs are necessary for the purchaser to take delivery of the natural gas. We deleted paragraph (b) of the previous draft which related to modifications of delivery dates after having concluded that such a restriction is unnecessary.

One comment asserted that Subpart F may not permit persons making final sales under intrastate rollover con-

tracts to collect severance taxes, borne by the seller and allowed under section 110 of the NGPA, in addition to the maximum lawful price.

The rule is not intended to restrict the collection of contractually authorized maximum lawful prices for which sales otherwise qualify. However, where the contract is silent as to payment of state severance taxes, the seller shall be presumed to be obligated to pay these taxes.

Finally, a comment requested a clarification of the effect of Subparts E and F in cases where sales were being made on November 9, 1978, pursuant to limited term or emergency sales contracts. As the November 15, 1978, notice stated, natural gas sold in interstate commerce under such contracts is excluded from the definition of "committed or dedicated to interstate commerce" under section 2(18) of the NGPA. Accordingly, the maximum lawful prices of Subparts E and F may apply to such sales.

PART 271 - SUBPART G

Subpart G of Part 271 implements section 107 (a) of the NGPA, which applies to first sales of natural gas from deep high-cost natural gas wells. It contains a special rule in § 271.704 clarifying the method of determining the depth of a well.

Section 107 of the Act authorizes the Commission to establish incentive prices for gas from geopressurized brine, occluded natural gas from coal seams, and gas from Devonian shale. It also authorizes the Commission to establish incentive prices for gas produced under other conditions as the Commission determines present extraordinary risks or costs.

This interim regulation does not attempt to implement the provisions of section 107 except as that section specifies prices for deep high-cost gas wells. Practical considerations have precluded our undertaking that effort at this time.

Comments suggested that the special rule in § 271.704, which provides the method of measurement to be used in this subpart, is "inapplicable to offshore wells." It was requested that for offshore wells the measurement be made from the floor of the drilling rig rather than from the surface of the ground. As written, the regulation reflects what the Commission believes to be the appropriate point

from which to measure the depth of the well. However, the Commission specifically requests additional comments with supporting data on the appropriate point from which to measure the 15,000 foot depth for offshore production.

PART 271 - SUBPART H

Subpart H of Part 271 implements section 108 of the NGPA, which is applicable to first sales of natural gas produced from stripper wells. This subpart contains definitions of terms used in section 108, and prescribes several special rules intended to assist in implementation.

Section 108 of the NGPA provides a maximum lawful price for stripper well natural gas, and prescribes a definition for stripper well gas. According to the general rule prescribed in section 108(b)(1) of the statute, natural gas is stripper well natural gas if, during the 90-day production period preceding the date on which application is made for a determination, the well produced nonassociated natural gas at its maximum efficient rate of flow and did not exceed an average of 60 Mcf per production day. Natural gas may qualify as stripper well natural gas regardless of the spud date for the producing well. Section 108(b)(2) also provides that a well may, after initial qualification, continue to qualify as a stripper well if production exceeds 60 Mcf per day during any 90-day production period, so long as the increased production is determined to have resulted from the application of recognized enhanced recovery techniques.

Section 271.803 of Subpart H defines "recognized enhanced recovery techniques" and "nonassociated natural gas." The definition of "recognized enhanced recovery techniques" includes processes or equipment which increase the ultimate recovery of gas from a well and excludes techniques or equipment necessary for normal well maintenance, repair or replacement.

The definition of "nonassociated natural gas" would permit a stripper well to qualify under this subpart if it produces crude oil in volumes which do not exceed specific limits. The rule provides for a sliding-scale ratio of natural gas to crude oil production. If a well produced an average volume of between 50 and 60 Mcf of gas per production day in the 90-day production period, it would qualify as a stripper well, provided that it produced no more than 1 barrel of crude oil during the same period. If, on the other hand, a well produced an average volume of between 30 and 50 Mcf per production day, it would qualify if crude oil production did not exceed 2 barrels per production day. Wells below 30 Mcf would qualify if crude oil production did not exceed 3 barrels per day.

Section 271.804 sets forth special rules which interpret and apply terms used in the NGPA. Section 271.804(a) and (b) concern the methodology for measurement of production from a well. Section 271.804(a) states that the volumetric basis for determining the rate of production from a single well is the total volume of gas produced from all producing intervals of the well.

Section 271.804(b) applies when the wells are not individually metered. In this circumstance, jurisdictional agencies may average rates of production in order to determine whether particular wells are stripper wells. For example, if six wells were attached to a single meter, and the meter showed deliveries averaging 360 Mcf per production day or less, presumptively all wells would qualify. If, on the other hand, deliveries from the six wells averaged 370 Mcf per production day, then presumptively, none of the wells would qualify. In either case, alternative evidence may be offered in rebuttal to establish qualification or the lack of qualiffcation.

Section 271.804(d) is a rule applying the statutory requirements with respect to "maximum efficient rate of flow" (MER). The section sets forth the statutory requirement. It also provides that a well is presumed to have produced at its MER during the 90-day production period if it produced

an average volume of 60 Mcf or less per production day during a 12-month period ending concurrently with the 90-day production period upon which the determination is based. There may, however, be situations in which a 12-month production history is not available. In such situations, the jurisdictional agency may look to other types of evidence, such as flow tests, which would measure the production capability of a well, or it may defer making the determination for a time necessary to acquire and submit a 12-month production history. If the agency defers the determination, the applicant would, if contractually entitled, be able to collect the stripper well price subject to refund.

The special rules contained in § 271.804(d) are designed to create a presumption upon which the jurisdictional agency may rely to determine that the well for which a determination is sought produced at its maximum efficient rate of flow during the 90-day production period upon which the application is based. This presumption is not exclusive, however. If results of well flow tests or other tests designed to determine the production capability of a well are available, the jurisdictional agency may rely on such results or other substantial evidence to make the factual finding that the well produced at its maximum efficient rate of flow.

Section 271.804(e) is a special rule which permits wells to retain stripper status despite increases in production above the 60 Mcf per day level, provided the increase is attributable to seasonal fluctuations. Jurisdictional agencies may make the determination that a well is seasonally affected on the basis of production history over a 24-month period if production from the well has not and cannot reasonably be expected to have exceeded an average of 60 Mcf per day for any 12-month period.

Section 271.805 is a rule implementing section 108(b)(2) of the NGPA. The rule disqualifies wells which, subsequent to the jurisdictional agency determination, produce quantities of gas in excess of the amounts permitted by the law and this subpart.

This rule provides for a reporting mechanism to monitor the continued qualification of the well. Both the operator of the well and the purchaser of the gas are obligated to report any increase in gas production above an average of 60 Mcf per production day for any 90-day production period. Unless the operator receives a determination from a jurisdictional agency that the increase was due to the application of recognized enhanced recovery techniques, or is determined to be seasonally affected, he may no longer collect the stripper price for the well. If the operator files a petition

for a determination that the increase in production results from enhanced recovery techniques or seasonal fluctuations, continued collection of the stripper well price shall be made subject to refund for deliveries made after the last day of the applicable 90-day or 12-month production period.

Most of the comments on this section were addressed to the proposed definition of "nonassociated natural gas." Many of the comments were made by persons from the Appalachian area -- Ohio, West Virginia, Pennsylvania, and Kentucky. Comments from the State of New Mexico also expressed concern over the definition of "nonassociated natural gas."

With only one exception, all of the parties concluded that the Commission's proposed definition of "nonassociated natural gas" was too restrictive. More specifically, they suggested that to base eligibility under this subpart on the showing that the well produced an average of one barrel of oil or less per production day for a 90-day production period will exclude many marginal wells in the Appalachian area from qualifying as stripper wells.

These comments asserted that the "one-barrel" limitation will result in the premature plugging and abandonment of marginal gas wells in the area which in turn could result in a permanent loss of reserves. It was argued that the

definition was unduly restrictive and was neither required nor contemplated by the law.

As is noted above, the Commission has decided to expand its definition of "nonassociated natural gas" so as to permit, in certain instances, a higher crude oil-to-natural gas production ratio than was originally proposed. The new definition uses a "sliding scale" which permits greater crude oil production as gas production declines. This approach is predicated in part on the economics of producing oil and gas from a marginal gas well. The new definition recognizes the limited revenues from marginal wells and attempts to provide a reasonable incentive to preserve this production. The Commission believes that the definition is a reasonable one, and is of the type contemplated by the authority given it in section 501(b) of the NGPA.

It was suggested that the proposed special rule which requires the total volume of natural gas produced from the well be utilized for purposes of calculating the average rate of production, regardless of whether the well is completed in more than one interval (§ 271.804(a)), be deleted. In support of this recommendation, it was argued that the proposed definition was contrary to the statutory intent of maintaining production from economically marginal wells.

In several instances, the NGPA clearly distinguishes between the terms "completion location" and "well." The terms are separately defined in section 2 of the NGPA. In sections 102 and 107 the distinction between "completion location" and "well" is clearly the basis for several determinations. However, section 108 provides that the stripper well natural gas classification can only be obtained for production from a "well." Unlike other sections, no mention is made of a "completion location" within a well. Accordingly, we have not adopted this recommendation.

One comment recommended that the special rule on "seasonally affected wells" (§ 271.804(e)) should be deleted because section 108 does not provide a statutory predicate for such a rule. The Commission disagrees. Production from a well often varies as a result of the pressure differentials created by temperature fluctuations. A rule that ignores this occurrence would place an undue administrative burden on producers, states and the Commission. Many wells would have to go through the qualification and disqualification process each year. For these wells the Commission believes that once a well qualifies as a stripper well, the provision permitting it to remain qualified as long as production does not exceed 60 Mcf per production day on a yearly basis, where

the well is determined to be seasonally affected, is both practical and within the spirit and intent of the law. The Commission believes that the practical result of not providing this exception to the 60-Mcf-per-production-day rule requires this exercise of its rulemaking authority under section 501(a) of the NGPA.

It was also proposed that §§ 271.804, 271.805, and 271.806 be amended to delete references to "90-day production period" and to insert in its place the phrase, "3-month production period." It was argued that this change will greatly simplify the administration of the regulations. It was further argued that because production records are kept on a monthly basis rather than a daily basis, it is impossible to calculate the 90-day production period figure required by section 108 of NGPA.

The Commission has incorporated the statutory language in its regulations. The Commission recognizes that production records and billing statements are often kept on a monthly basis. Consequently, the Commission believes that reasonable assumptions premised upon such records, which attempt to calculate average production per production day for the 90-day production period upon which the application is based, will provide the jurisdictional agency with sufficient evidence upon which a determination may be made.

Several comments requested that we define "recognized enhanced recovery techniques" with greater specificity. Some comments suggested that the proposed definition should be drafted to specifically exclude wellhead compression techniques.

The Commission believes that the term "recognized enhanced recovery techniques" should not be more explicitly defined until more experience has been gained as to what specific equipment and processes should be included. It is anticipated that the Commission will identify specific enhanced recovery techniques in the future. In the interim, the Commission will address the question of whether enhanced recovery techniques have been applied on a case-by-case basis. After some experience, the Commission will determine whether general rules are either necessary or desirable.

It was pointed out that the determination as to what constitutes enhanced recovery techniques under § 271.803(a) should be left to jurisdictional agencies and not to the Commission. This suggestion is contrary to the statutory requirement of section 108(b)(2). This section requires that the Commission provide a rule for continued qualification of nonassociated natural gas where such natural gas is produced from a well when production from such well exceeds 60 Mcf per production day as a result of the application of enhanced recovery techniques.

The rule promulgated by the Commission to implement this section relies on the expertise of both the jurisdictional agencies and the Commission. This reliance is required at this time since the question of whether enhanced recovery techniques have been applied will often turn upon factual considerations.

Finally, the Commission was asked to require that all flow tests be made by employees of jurisdictional agencies or independent engineers certified by a jurisdictional agency. At this time, we find that this requirement is unnecessary.

PART 271 - SUBPART I

Subpart I of Part 271 implements section 109 of the NGPA by setting a maximum lawful price for "other categories of natural gas," that is, for first sales of natural gas that are not covered by any maximum lawful price under any other subpart of Part 271. [Emphasis supplied.]

Section 109 of the NGPA presents an important question of interpretation. The portion of section 109(a) which precedes paragraph (1) limits section 109's application to "natural gas which is not covered by any maximum lawful price under any other section of this subtitle." [Emphasis supplied.] However, paragraph (1) of section 109(a) specifically includes natural gas "produced from any new well not otherwise qualifying for a higher maximum lawful price." [Emphasis supplied.] The question presented is whether the general language in section 109(a) is intended to limit the scope of the examples which follow (so that new wells which qualified for a lower price under another section of the NGPA would be excluded from section 109), or whether the specific examples override the general statemant of the scope of section 109 (so that new wells otherwise subject to a maximum lawful price which is lower than the section 109 price nonetheless would be eligible for the higher section 109 price).

In this regard, it should be noted that the portion of section 109(a) which precedes paragraphs (1) through (4) introduces those paragraphs with the word "including." Under general rules of construction therefore, it would appear that paragraphs (1) through (4) are qualified and controlled by the general statement of applicability which limits section 109 to first sales not covered by any maximum lawful price. For this reason, the Commission is of the view that the first interpretation is correct and has incorporated that interpretation in the regulations implementing section 109. A special rule in § 271.904 provides that the maximum lawful price in this subpart applies to a first sale of natural gas described in paragraphs (1), (2), (3), or (4) of section 109 (a) only if that first sale is not covered by any other maximum lawful price in the NGPA.

Several comments were received which argue that the interpretation of section 109(a) which is reflected in the regulations is wrong. These comments state that the specific examples set forth in section 109(a)(1) through (4) are intended as additions to the general category set forth in the portion of section 109(a) which precedes

paragraph (1). We specifically invite further comments on this issue.

Finally, a comment was submitted recommending that § 271.904(a) contain a reference to § 273.201 in order to help eliminate confusion over the right of the producer initially to apply for the section 109 price under the interim collection regulations. The recommendation is in error in that natural gas which qualifies for the interim rate under § 273.201 must also be the subject of an application for a determination under Subparts B, C, G, or H of Part 271. The natural gas subject to the price established in § 271.904(a) under section 109 of the NGPA cannot, by definition, qualify under those subparts.

PART 271 - SUBPART K

Subpart K of Part 271 of the Commission's interim regulations implements section 110 of the NGPA. That section permits a first sale price of natural gas to exceed the applicable maximum lawful price for that sale to the extent necessary to recover state severance taxes borne by the seller. It also permits a first sale price of natural gas to exceed the applicable maximum lawful price for that sale to the extent necessary to permit the recovery of allowances for certain production-related costs which are a component of just and reasonable rates established under the NGA and certain production-related costs for natural gas not subject to just and reasonable rates under the NGA, if such costs are borne by the seller, and allowed by the Commission.

Section 271.1101(a) incorporates the definition of "state severance tax" contained in section 110(c) of the NGPA. This definition includes most types of production taxes, including ad valorem taxes which are based upon the amount of production. Therefore, the Commission believes it is unnecessary to specifically include the various types of severance taxes in the definition. Subparagraph (2) of paragraph (a) of § 271.1101 incorporates the statutory exclusion of taxes, which were enacted on or after December 1, 1977, and which do not apply equally to natural gas produced for

delivery to interstate commerce and gas produced but not so delivered.

Section 271.1102 states that the maximum lawful price applicable to a first sale of natural gas will not be deemed to be exceeded, if the first sale price exceeds the maximum lawful price only to the extent necessary to recover state severance taxes borne by the seller. Paragraph (b) of § 271.1102 acknowledges that the just and reasonable rates applicable to natural gas produced from the Permian Basin area already include a specific allowance for state severance taxes. Therefore, those amounts are excluded from the provisions of the section so as not to permit double-recovery by the seller of State severance taxes for production in the Permian Basin which is subject to the Permian Basin area rate. State severance taxes actually paid by the seller in excess of 2.6 cents per Mcf for large producers and 3.05 cents per Mcf for small producers will be permitted to be recovered under paragraph (a) of § 271.1102 (so long as such taxes are paid by the seller).

Section 271.1103 contains a requirement that sellers retain records verifying the amount of state severance taxes borne by the seller for transactions in which the maximum lawful price is exceeded as a result of the addition of amounts necessary to recover state severance taxes.

Section 271.1104 provides that an applicable maximum lawful price for a first sale may be exceeded to the extent necessary to recover certain allowances permitted under the Natural Gas Act. These allowances include the area-wide gathering allowances and the allowances permitted for the delivery of offshore natural gas currently described under Part 2 of the Commission's regulations. While references to both the national rates for sales from wells commenced on or after January 1, 1973 (§ 2.56a) and those from wells commenced prior to that date (§ 2.56b) are given, these allowances are identical. The two references were supplied to make it clear that persons who were receiving such allowances, under either provision, will continue to receive them if they are qualified. Qualifications for these allowances are set forth in paragraph (b). To receive these allowances for a first sale of natural gas the seller must (1) be selling natural gas which was committed or dedicated to interstate commerce on November 8, 1978, and for which a just and reasonable rate was in effect on that date; and (2) must meet the applicable requirements of §§ 2.56a(d), 2.56b(e), 2.56a(e), or 2.56b(f) of this chapter.

Several comments, particularly those dealing with the problems of resellers, requested the inclusion of what is now § 271.1104. The Commission believes that while the allowances are based on cost data supplied several years

ago, such allowances should be permitted inasmuch as they were permitted for rates previously set by the Commission. It would serve no regulatory purpose to require sellers making first sales under these previously established just and reasonable rates to apply for such allowances under § 271.1105 when such gathering allowances, as permitted in Part 2 of this chapter, have already been deemed just and reasonable.

Section 271.1105 establishes a procedure under which the Commission will consider applications for amounts to be collected in addition to maximum lawful prices to the extent necessary to recover certain production-related costs.

Paragraph (b) of § 271.1105 precludes the filing of any application for such an allowance if the natural gas subject to the first sale was committed or dedicated to interstate commerce as of November 8, 1978, and was subject to a just and reasonable rate in effect at that time. It also precludes applications with respect to natural gas subject to an existing intrastate contract, successor to an existing intrastate contract, or an intrastate rollover contract.

Several comments focused on the exclusions in this section. The exclusion of committed or dedicated natural gas is not an attempt on the part of the Commission to decide the issues now before the Commission on rehearing in

Phillips Petroleum Company, Docket No. CI77-412, et al. Instead, the exclusion of natural gas for which a just and reasonable rate was established by the Commission on or before November 8, 1978, from the operation of § 271.1105 reflects the Commission's intention to reserve these issues for decision in the Phillips case rather than in the interim regulations.

The subsequent and separate order in the Phillips rehearing will set out the Commission's policy in this regard. The exclusion of natural gas sold intrastate subject to existing contract obligations reflects a similar view: namely, that the existing contract provisions reflect the allocation of costs of production as they were contemplated by the parties at the time the contract was negotiated. These provisions, and more importantly any change in such provisions, would change the price actually paid for the natural gas subject to the existing contract. The NGPA in sections 105 and 106(b) establishes a pricing mechanism which relies upon the prices and the contractual terms as they relate to price as such prices and terms were in existence on the date of enactment of the NGPA. It would be contrary to the intent of Congress to permit a change in such prices and terms that would have the effect of increasing the total costs borne by the purchaser for acquiring the

very same commodity as he was acquiring for a lower price before date of enactment. This would also be contrary to the intent of this provision and the NGPA and would unnecessarily complicate the implementation of sections 105 and 106(b) of the NGPA. The Commission believes that the exclusion contained in § 271.1105(b)(2) is consistent with Congressional intent to establish maximum lawful prices for such contracts by reference to the terms and conditions as they relate to the allocation of production-related costs as they were in existence on the date of enactment.

The interim regulations provide, in paragraph (c), that applications to the Commission will be considered for costs of gathering, liquifaction or transportation only if those latter activities occur off the lease from which the natural gas was produced. It is the intent of the Commission that the costs of gathering, liquifaction, or transportation should only be permitted to the extent that they are not activities normally performed in the production of natural gas. The Commission believes that costs of gathering, liquifaction, and transportation when performed on-the-lease are activities normally performed by a producer in production of natural gas. Where such costs for activities performed on-the-lease are extraordinary, a seller may seek an

adjustment pursuant to section 502(c) of the NGPA to prevent special hardship, inequity, or an unfair distribution of burdens. Such relief is specifically recognized in § 271.1106.

The regulation does differ from the notice of proposed rulemaking in that the term "off-lease" has been revised to read "off of the lease from which the natural gas was produced." This change was made in response to a comment in the proposed regulation that the original language would unfairly impact upon operations where such activities were performed for one producer by another producer but off of the lease from which the natural gas was produced.

Paragraph (d) sets out certain quality standards for natural gas. Only applications for recovery of that portion of costs necessary to bring gas to a quality greater than specified in the standards will be considered under this section. This section provides an exception to this rule for transactions involving direct sales to end users. With respect to the pipelines, the Commission has determined after a review of existing contractual terms and data filed with the Commission, the standards specified are those which are normally required for pipeline quality natural gas. The Commission does not have sufficient data to draw the same conclusions with regard to direct sales to end users. The Commission requests further comment on these standards.

A substantial number of comments were received on this section. Some comments argued that section 110 of the NGPA addresses only costs relating to the production of natural gas. It was argued that, to the extent costs such as those enumerated under this section are incurred after production, the Commission lacked authority to regulate them under section 110. Second, it was argued that all costs, those respecting processing and treating, as well as those for such activities as gathering and transportation, should be treated together. Third, the method used to identify the minimum quality standards was questioned. It was submitted that such requirements, as set down by the Commission, overlooked the extraordinary costs which may be required to meet the stated conditions. Fourth, it was argued that no minimum standards should be set; that the Commission should merely permit a dollar-for-dollar passthrough of these and similar costs. Finally, the point was raised that if such standards are to be set, they should be made uniformly applicable and they should be based upon area-wide requirements determined after the gathering of more detailed data.

The Commission believes that section 110 of the NGPA does not require that all costs for compressing, gathering, processing, treating, liquifaction, or transportation must be treated together and dealt with identically. Indeed, this reading of section 110 is inconsistent with the fact that the

different types of costs are indeed incurred at different times and locations. Treating all such costs as a group is impossible as a practical matter and could not have been intended by the Congress. To restrict the applicability of section 110 to costs borne only by the producers and only to the extent necessary to bring natural gas to the surface of the ground would work a hardship on other "sellers" subject to maximum lawful prices. This result is clearly contrary to section 110 which refers to costs "borne by the seller".

The Commission has provided regulations to permit recovery of costs relating to certain gathering, liquifaction, transportation, and compression under § 271.1105(c). The Commission has also provided for the recovery of costs relating to certain conditioning and treating under § 271.1105(d). These separate provisions are warranted since the costs are similarly incurred during the production cycle.

Several comments were specifically directed to the provisions of § 271.1105(d). These comments argued that the Commission is establishing minimum standards of quality and that the Commission does not have the requisite authority. The Commission disagrees with these comments. First, the Commission is addressing the issue of which costs will be allowed to be added-on to the statutorily specified maximum prices. Section

110(a)(2) specifically states that costs for processing and treating, among other things may be recovered only to the extent "allowed for, by rule or order," of the Commission. The statute does not require the Commission to automatically permit the recovery of all such costs, but leaves to the discretion of the Commission whether to grant the authority to the sellers to recover such costs. In exercising such discretion, the Commission may attach such terms and conditions as it deems appropriate so long as they are not contrary to statutory intent or arbitrary and capricious. On the basis of the discussion set forth in this preamble, the Commission believes that the terms and conditions imposed by these regulations are necessary and appropriate to carry out the intent of Congress in enacting the NGPA.

Standards for determining when the Commission will entertain applications for a determination that the maximum lawful price has not been exceeded as a result of the addition of certain production-related costs are required in order to assure that natural gas for which the maximum lawful prices set by the NGPA are paid is that commodity which is of relatively uniform value to the purchaser. When a price is charged and collected for a specific commodity, such a product is normally deemed to have certain basic qualities which define the item being purchased. The

Commission does not believe that Congress, when setting the maximum lawful prices for natural gas, did not anticipate that the sellers would bear normal costs of production in making this commodity useful to the purchaser. The maximum lawful prices were designed to permit the sellers to recoup such costs. Section 110 recognizes that some sellers may incur abnormally high costs of production and permits recovery of those costs in circumstances where the Commission finds such recovery to be warranted.

The statute envisioned that the Commission could perform these responsibilities either by rule or on a case-by-case basis. Recognizing the differences in production cost that may occur, the Commission, through these regulations, is utilizing both rulemaking and particularized orders to implement section 110.

Section 271.1100(b) excludes from the operation of § 271.1104, § 271.1105, and § 271.1106, natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the system approved under the Alaska Natural Gas Transportation Act of 1976 (ANGTA). Prudhoe Bay is a new and unique producing area for which there is no history of industry practice relative to the bearing of production-related costs. Therefore, a separate rule under the provisions of ANGTA for natural gas from that producing area

is required and will be promulgated by the Commission in the immediate future.

This exclusion received some comment. One comment, while agreeing that natural gas produced from Prudhoe Bay should be treated differently from that produced in more conventional settings, evidenced a concern that it would not be so treated. Instead, it was feared, the Commission would seek to apply to this natural gas such standards as were set forth in Subpart K. In addition, the same comment raised the question of how natural gas produced from areas similar to that of Prudhoe Bay would be treated. Both of these concerns turned upon the view that as proposed, the regulation did not touch upon a typical situation of costs for production or transportation. A second comment took issue with the Commission's consideration of separate costs associated with the Prudhoe Bay effort. The gravemen of this comment was two-fold: first, that excepting Prudhoe Bay gas resulted in continued uncertainty as to the Commission's treatment of this natural gas; second, that a rulemaking under ANGTA, as opposed to the NGPA, was neither warranted nor proper.

The failure to except other, similar production areas (as for example the North slope), was intentional. It is envisioned that to the extent such other areas evidence

particular characteristics which require special treatment, either more data will be available whereby they can be properly treated, or they can be considered under § 271.1106. Prudhoe Bay requires special consideration, for in that case data is available to assist the Commission in considering the questions attendant to maximum lawful pricing provisions. As already mentioned, these questions are to be dealt with by a special rulemaking.

The issue as to which statute applies for purposes of providing for Prudhoe Bay is, like the issue of the actual treatment of production-related and similar costs for this production area, best addressed within the setting of the proposed rulemaking. Suffice it to say that the Commission believes that its authority under section 110 of the NGPA is broad enough to make special provisions and exceptions as between regions if good cause can be found. Considering the state of production from Prudhoe Bay, the Commission is of the opinion that the exception is, at this stage, required.

PART 273

The purpose of Part 273 is the establishment of procedures for the interim collections authorized by section 503(e) of the NGPA. Section 503(e) permits interim collection, subject to refund, of those prices for certain categories of natural gas for which a determination of eligibility is made by a jurisdictional agency and is subject to review by the Commission. These categories are new gas and certain OCS gas (as defined in section 102 of the NGPA), gas from new onshore production wells (section 103), high-cost natural gas (section 107) and stripper well natural gas (section 108).

Description of the regulations. Part 273 is divided into three subparts: general provisions, interim and retroactive collection provisions, and the procedures for refund guarantees and refund payments.

Subpart A which contains general provisions has not been revised. Few comments on this subpart were received. Section 273.101 states that eligibility under these regulations to collect a maximum lawful price for a particular category of gas does not give a seller the right to collect a price which is higher than that permitted by the sales contract. Section 273.102 defines a "final determination" for purposes of this part as a determination of eligibility

by the jurisdictional state or federal agency which is no longer subject to review and reversal by the Commission or the courts except pursuant to section 503(d)(1) of the NGPA. Section 273.103 requires each seller to file an annual report of any collections and refunds under this part.

One comment noted that the annual report requirement would be burdensome to small intrastate producers. Another comment suggested that this report replace the specific filing requirements of Subpart B for each first sale. The Commission believes that specific filings and the annual report are necessary to monitor collections and refunds under this part. Prior to the end of the first reporting period, on December 31, 1979, the Commission will issue a rule specifying the form and scope of the annual report.

Subpart B of Part 273 provides the specific rules for interim collections and for retroactive collections where the maximum lawful price established by a final determination exceeds the price collected on an interim basis. Section 273.201 establishes a transitional rule which is limited to first sales from new wells. It was suggested that the eligibility for interim collections under § 273.201 be broadened to include first sales of natural gas, in a new reservoir that is produced from an old well or is stripper

well natural gas. The limitation to new wells is taken directly from section 503(e)(1) of the NGPA and applies the definition of new wells found in section 2(3) of the NGPA. It will not be modified. Sales of stripper gas or new gas from an old well may qualify for interim collections under § 273.202 and for retroactive collections under § 273.204.

Under the regulations proposed for comment, the transitional rule would have terminated on March 1, 1979. The interim regulations have been revised to permit collections under this provision to continue until the jurisdictional agency issues a determination of eligibility. A seller may collect, subject to refund, the price determined under section 109 of the NGPA, if an application for determination is submitted to the jurisdictional agency by March 1, 1979. This price may be charged and collected beginning on the date on which the seller completes the filing requirements under this section and ending on the date of notice to the Commission of a determination by the jurisdictional agency for the well from which the sale is being made. One comment requested a grace period allowing full interim collections for December 1978 if the filing required under this section is submitted by December 31, 1978. This modification of the statutory scheme will not be adopted. The retroactive collection procedure under § 273.204 may be available

to recoup charges and collections which cannot be made immediately because of delayed compliance with the filing requirements.

To qualify for the transitional collection authority, the proposed regulation stated that a seller must file with the Commission a sworn statement that the sale is being made from a new well which is eligible for the price to be collected, and that the seller has filed an application for determination with the jurisdictional agency or will do so by March 1, 1979. Two comments noted that some jurisdictional agencies do not permit filings to be made by sellers who are not actually operating the well. Therefore, the filing requirements have been modified to permit a sworn statement that the seller will cause an application to be submitted, on or before March 1, 1979, by a person authorized to do so by the rules of the jurisdictional agency. A seller who cannot make that sworn statement in good faith may substitute a sworn statement by a person eligible to file a timely application.

After an application for determination has been filed, a seller may use the procedure established by § 273.202 to collect, subject to refund, the maximum lawful price for which the sale is believed to be eligible, for a period of

up to eighteen months (or twelve months where collections under this section begin on or after May 1, 1979). Alternatively, if the application for determination was filed by March 1, 1979, the seller may continue to collect the price specified in § 273.201(a) until the Commission receives notice of the determination by the jurisdictional; agency.

The proposed § 273.202 rule has been modified to some extent. To qualify for interim collection authority under § 273.202, a seller must fulfill certain filing requirements, by submitting a sworn statement of eligibility, a duplicate of FERC Form 121 accompanying the application for determination, and either a statement certifying that a portion of the amounts collected under this procedure will be placed in escrow or secured by surety bond or a release from this obligation executed by the purchaser.

The authorization to make interim collections of the price for which the sale is believed to be eligible terminates on the date on which the Commission receives a notice that a determination of eligibility has been made, or after eighteen months (or twelve months where collections under the section begin on or after May 1, 1979) where no determination has been made. After such termination, the seller may not use this procedure again for this sale or any other

sales from the same well. Where a determination has not been made within eighteen months and the authority to collect a price under this section ends, a seller may use § 273.201 to collect the price authorized by that section; but only where the application for determination was filed on or before March 1, 1979. Otherwise, the seller will be limited to collection of the applicable maximum lawful price specified in Subparts D, E, F, or I of Part 271. After an initial determination is made, § 273.203 can be used to collect the price established by that determination.

Three significant questions were posed by the comments on the proposed § 273.202. In addition, there was one suggestion that each of the items to be filed under paragraph (c) are not needed. Many comments requested deletion of the proposed condition in paragraph (a) that collections cannot begin under this section until the appropriate jurisdictional agency has filed with the Commission an undertaking to diligently consider and decide applications and the report on procedures to be used by the agency, as required by § 274.105. These comments argue that this qualifying condition is unlawful or inequitable, chiefly because compliance is beyond any seller's control. The comments recommend that sellers be permitted to make interim collections under this section after an appropriate filing with this Commission.

Section 503(e)(2) of the NGPA provides that the price sought in an application for determination can be charged and collected upon filing of an application. The Commission believes that it is particularly important that higher prices dependent on determinations of eligibility should not be charged and collected, subject to refund, until a jurisdictional agency has undertaken to consider these applications and has established procedures to make determinations that on these applications. Moreover, collections under this section should not continue if a jurisdictional agency is not actively proceeding to make specific determinations.

To better express our intent, the proposed § 273.202(a) will be changed in two respects. First, this condition will be restated as a requirement that no filing to charge and collect a maximum lawful price under this section may be submitted to this Commission until the jurisdictional agency to which the application for determination has been made has filed the report and undertaking required by § 274.105. As noted in the discussion of Subpart A of Part 274, the form of the undertaking has been modified to require the jurisdictional agency to state that it will take such steps as are reasonably necessary or appropriate to perform its functions under Part 274. Second, unless a jurisdictional agency has notified the Commission by March 1, 1979, that it is actively

processing the applications for determinations, then authority to make interim collections under this section will be suspended with respect to deliveries made during the period from March 1, 1979, until the date on which the jurisdictional agency gives notice that the applications are being processed. During this suspension period, collections under § 273.201 will be permitted if an application was submitted to such agency by March 1, 1979. A similar change is made in § 273.204 so that later retroactive collections will also be suspended and not permitted over the same period.

One comment has also addressed two of the other paragraphs within § 273.202. First, it is argued that the limitation of interim collections under this section to no more than eighteen or (twelve) months should be deleted as "unreasonable and inequitable", again because termination of interim collections under this section could result from inaction by a jurisdictional agency beyond the control of any seller. The Commission does not believe that this limitation is unreasonable or unnecessary. The Commission will consider a revision of this rule if it proves to be unworkable or if substantial hardships result. In any event, retroactive collections under § 273.204 or additional interim collections under § 273.201 may be available in such circumstances.

There is a final suggestion that paragraph (d) of § 273.202 should be modified to permit successive interim collections of the maximum lawful price for stripper natural gas; for example, where there is a determination that a well is not a stripper well under section 108 of the NGPA, but another application for determination is properly submitted after a change in the level or character of production from that well. This suggestion will not be adopted. Upon a final and later determination that a well qualifies as a stripper well, the seller may be eligible to use the provisions of § 273.304 to collect retroactively the maximum lawful price for stripper natural gas, plus carrying charges back to the date on which the later application was filed.

When the jurisdictional agency issues its determination of eligibility for the well from which the sale is being made, § 273.203 authorizes interim collection, subject to refund, of the price established by that initial determination. Within 15 days after interim collection begins under this section, a notice of collections must be filed with this Commission and the jurisdictional agency and also served upon the purchasers. There are no other filing requirements under this section. The Commission will not adopt the suggestions that these limited requirements should be deleted as unnecessary. The authority to collect the price

established by the initial determination of eligibility ends when that determination has been reviewed and becomes final. If the Commission does not approve or reverse an initial determination, but makes a final finding that the determination should be remanded to the jurisdictional agency for further consideration, then the seller may continue to collect the price established by the remanded determination for up to six months during reconsideration by such agency.

When a determination of well eligibility becomes final, a seller may immediately collect the price established there for all future sales from that well under the authority of the applicable section of Title I of the NGPA and Part 271 of these regulations. Section 273.204 of this part authorizes the retroactive collection of that finally determined price for all first sales of gas delivered after the application for determination was filed. If this application is filed by March 1, 1979, then retroactive collections may be made for gas delivered on or after December 1, 1978. However, as previously explained, retroactive collections cannot be made for first sales of gas delivered during the period in which a jurisdictional agency is not actively considering the applications for determination that have been submitted. Unless the Commission receives written notification by March 1, 1979,

that the jurisdictional agency is then making determinations, later retroactive collections of the finally determined price will not be authorized for the period from March 1, 1979, until the jurisdictional agency gives notice to the Commission that determinations are being made.

Although recognizing that section 501 of the NGPA empowers the Commission to impose conditions on retroactive collections, one comment stated that the "cut-off" of complete retroactive collections, (where the application for determination has not been filed by March 1, 1979) is unreasonable. Otherwise, it continued, producers lacking immediate engineering assistance will be precluded from retroactively collecting the finally-determined price from December 1, 1978 until the date of application for a determination (if filed after March 1, 1979) and thus suggested that the minimum acceptable "cut-off" would be July 1, 1979.

The Commission believes that the current "cut-off" of March 1, 1979, reflects a reasonable balancing of the sellers need for sufficient time to prepare applications against the burden to be placed on purchasers and their consumers by the accrual of large sums for later retroactive collection. Interstate pipelines commented that retroactive collections "could have substantial adverse repercussions" for them and for their customers.

We should also provide a clarification that the period of retroactive collections is based upon the filing date of a complete application for determination, in compliance with Subpart B of Part 274 and the applicable regulations of the jurisdictional agency receiving the application. Where an application is rejected, either by the jurisdictional agency or after an initial determination by this Commission that the application does not conform to these regulations, then retroactive collections will be authorized from the date on which a conforming application is refiled (or December 1, 1978, if the conforming application is refiled by March 1, 1978).

Conversely, there was one comment that any provision for retroactive collections would be unlawful, because there is no explicit authorization within section 503(e) of the NGPA. In our opinion, a retroactive collection rule is not inconsistent with the statutory language and is mandated by the Statement of Managers and the floor debate on the statute. We have attempted to establish reasonable limitations and conditions on these collections.

Many comments were directed to the qualifying conditions proposed in § 273.304(b); and the interim regulations will reflect several modifications. The proposed

subparagraph (1) of § 273.304(b) stated that "[r]etroactive collections may be made only to the extent and in the manner specified by the applicable sales contract (or amendment thereto). . . ." The Commission does not agree with this comment that some explicit statement of this principle is unnecessary although the specific wording has been changed. As that comment recognizes, no price or amount authorized by any of these regulations may actually be collected from the purchaser unless there is sufficient contractual authorization for the payment. Also, we will not accept the other suggestion that a single method for such payments should be mandated, believing that this question should be left to the discretion of the parties within the limits provided by the sales contract and any later amendments. Thus, we will not require that all retroactive amounts must be collected immediately after a determination becomes final or over a period equal to the time during which this obligation accrued. The seller will be required to file a concurrence by the purchaser in the method and amount of retroactive collections.

Proposed subparagraph (2) of § 273.304(b) would have required "full compliance" with all applicable regulations of the Commission as a condition upon any retroactive collections. This requirement has been deleted. The

comments reflected substantial confusion about the scope of this subparagraph and argued that it is "overly broad", particularly because of the uncertainties and difficulties which the comments were anticipates during the initial implementation of these regulations. This deletion will not limit our ability to enforce compliance with the NGPA and these regulations.

Similarly, the scope and intent of subparagraph (3) of the proposed § 273.304(b) will be clarified. Subparagraph (2) of § 273.304 in the interim regulations will state that a seller may not collect a retroactive amount from a purchaser for any sale, until the seller has refunded to that purchaser any amounts due to be refunded to such purchaser for any other sale under the NGPA and this subchapter of the Commission's regulations. Compliance with any separate obligation to refund amounts collected under section 4 of the NGA (rather than under the NGPA) will be monitored and enforced using the Commission's existing producer regulations in Part 154.

Finally, the proposed regulations stated that carrying charges on the amount to be collected retroactively would be permitted "only to the extent agreed upon by the parties" to the sales contract. The interim regulations, § 273.304(b)(4), have been revised to require that any agreement of the parties

which provides for carrying charges must be reduced to writing and then filed with the Commission. There were no comments on this provision, except for one question: whether an interstate pipeline is entitled under section 601(c)(2) of the NGPA to guaranteed pass-through to its customers of any carrying charges paid under this section. Consideration of this question is not required at this time. It may be addressed by rule or in specific cases, after carrying charges have been paid by interstate pipelines. We should explain now that section 601(c)(2) of the NGPA does not guarantee automatic pass-through of charges to interstate pipelines under the interim collection provisions. Interim collections will necessarily precede final determination of the maximum lawful price for such sales. Therefore, interim collections cannot be deemed just and reasonable under section 601(b) and thus cannot qualify for guaranteed pass-through to pipeline customers under section 601(c)(2).

In some instances, the provisions of this part will be used to collect interim prices for first sales of natural gas which was committed or dedicated to interstate commerce on November 8, 1978, the day before the date of enactment of the NGPA. Under section 601(a)(1)(B) of the NGPA, sales of committed or dedicated gas will be subject to the Commission's jurisdiction under the Natural Gas Act, particularly to the filing requirements for making a rate

change, until a final determination that such gas qualifies as high-cost gas, new gas, or gas produced from a new onshore production well. The relationship between the filing requirements of these NGPA regulations and Part 154 of the regulations under the NGA is discussed in the Commission's final rule amending § 154.94(h) of Part 154, issued November 17, 1978 in Docket No. RM79-4, as Order No. 15. Under the final rule, in the case of interim collections for first sales of gas which remain subject to the requirements of the NGA, full compliance with the filing requirements of this part and the other regulations under the NGPA will also satisfy the additional filing requirements under section 4(e) of the NGA and Part 154 of the Commission's regulations. Thus, a seller which makes the filing required by § 273.202(c) may collect the price specified in the application for determination of eligibility without submitting the prior notice of rate change required by § 154.94 of the Commission's regulations under the NGA.

Subpart C of this part establishes procedures to assure that any interim collections will be refunded as necessary and for the actual payment of refunds with interest after a final determination that a first sale does not qualify for a price already collected under this part. Section 273.301 establishes a general obligation upon each seller to refund

any collections which are not authorized by the NGPA and these regulations, if ordered to do so by the Commission at any time. For example, a determination can be reconsidered and modified after it becomes final, if it was based on an untrue or misleading statement of material fact in the application for determination. As a result of that modification, additional refunds could be ordered even though the seller would have already discharged any specific refund obligations under § 273.302 and the prior final determination.

Section 273.302 sets out specific procedures for refund assurance and payment. A seller's potential liability to refund any interim collections must first be secured by the filing of a written undertaking to make refunds using one of the forms set out in § 273.302(b). A seller must file a series of refund undertakings covering collections for sales from the wells identified in an appendix to each successive undertaking, or one blanket undertaking which is a general agreement to make all refunds which may be required under the NGPA.

Interim collections that are made under § 273.202 pending an initial determination of eligibility and the proper price are subject to a further requirement providing additional refund assurance. Section 273.302 of the proposed regulations required the seller to secure

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by surety bond or to place in escrow the portion of the price collected under § 273.202 which exceeds the maximum lawful price determined under section 109 of the NGPA (for sales from new wells) or the maximum lawful price under sections 104, 105 or 106 of the NGPA (for sales from old wells).

This provision was opposed by comments from a variety of persons. These comments argued that a mandatory escrow provision would be unduly burdensome to producers and costly to consumers who would receive a lower rate of interest on escrowed refunds. A corporate guarantee or undertaking to make refunds should be sufficient, according to these comments, because this simple procedure has been used successfully by the Commission to provide ample assurance of refunds under the NGA. In response to these many comments, the proposed § 273.302(c) has been modified to require in the m interim regulations that a portion of interim collections under § 273.202 must be secured by a surety bond or placed in escrow, unless the purchaser by written agreement releases the seller from this requirement for additional refund assurance. Thus, the Commission will accept initially a judgment by the purchaser on the seller's ability to make future refunds; but, in specific cases under subparagraph (b)(3) of this section, additional refund assurance may be ordered

by the Commission at any time for any interim collections under Subpart B.

Other provisions of § 273.302 require each seller to maintain full records of the amounts that are collected subject to refund, and to make the actual refunds by cash or check within forty-five days after the applicable determination of eligibility becomes final. There is no provision for any other method to discharge a refund obligation, such as by work-offs, commitment of additional reserves to each purchaser, or reduction of the price charged for future deliveries. Permission to use an alternative refund method will be granted only in exceptional cases.

PARTS 274 AND 275

General. Under certain sections of the NGPA, eligibility for the maximum lawful price established by the NGPA Act is initially determined by the state or federal agency with regulatory jurisdiction over the production of natural gas. Jurisdictional agency determinations are subject to review by the Commission.

Jurisdictional agencies are authorized to make the determinations with respect to:

(1) new natural gas under section 102(c) of the NGPA;

(2) certain gas from the OCS under section 102(d);

(3) new, onshore production, defined in section 103(c);

(4) high-cost natural gas defined in section 107(c); and

(5) stripper well natural gas defined in section 108(b).

The purpose of Subparts B, C, G, and H, of Part 271, is to reflect the statutory criteria for qualification for the maximum lawful prices for the categories of gas noted above and to establish rules necessary to clarify or implement those provisions. Subpart B of Part 274 of the regulations contains the filing requirements which apply to applications for determinations filed with jurisdictional agencies. Subpart A of Part 274 of the regulations applies

to the procedures by which jurisdictional agencies make initial determinations and give notice of these determinations to the Commission. Subpart B of Part 275 of the regulations prescribes the method by which the Commission will review those determinations. Each of these provisions is summarized below.

PART 274 - SUBPART A

Subpart A of Part 274 prescribes procedures by which jurisdictional agencies make determinations pursuant to and in accordance with the NGPA. This subpart provides that the procedures applicable to the determinations by the agency shall be those procedures prescribed by State law to make the determinations under the NGPA or comparable determinations. In addition, this subpart contains a rule concerning the manner in which a jurisdictional agency must notify the Commission that it has made a final determination of eligibility.

Section 274.102 provides that a determination is made once it is "administratively final" before the jurisdictional agency. If, for example, a state agency's decisions are normally subject to rehearing under its usual procedures, the determination is not final until the period for rehearing expires or rehearing is sought and denied.

Section 274.104 provides that a jurisdictional agency must notify the Commission within 15 days after making a determination and prescribes the manner in which the jurisdictional agency shall give the notice. The notice must include: (1) a list of participants in the proceeding and any person who submitted or sought to submit written comments; (2) a statement indicating whether the matter was opposed before the jurisdictional agency; (3) the information set forth in § 275.105 as applied to the determination in question, unless the jurisdictional agency has filed a report with the Commission in accordance with § 274.105; (4) a copy of the application and a copy or description of other material in the record upon which the determination was made; and (5) an affirmative finding that the information described in the applicable filing requirements is contained in the notice.

The final regulations differ from the proposed regulations in three respects. First, the requirement that the agency submit to the Commission a copy of the FERC form submitted to the agency by the applicant has been deleted. The final rule requires the application to be filed whenever an affirmative determination is made, and the FERC form is part of the application. The rule also differs from the proposal by not requiring the jurisdictional agency to submit to the Commission a copy of the complete record; instead the

agency must submit the application and either a copy or a description of the materials in the record, in addition to the application, upon which it relied in making the determination. This change was made in response to two comments which indicated that the necessity to file the complete record would be unduly burdensome, requiring the copying and transmittal of large amounts of technical data for a single application. Upon reconsideration, the Commission has determined that it will be able to fulfill its review obligation by looking to the application and if necessary, procuring other materials described as being in the record upon which the agency relied.

The third change is reflected in a new subparagraph (5) in § 274.103. This subparagraph requires that the jurisdictional agency make an affirmative finding that the information required to be filed with an application has been forwarded to the Commission. If some of that information was in the files of the jurisdictional agency, copies of the relevant portions of the files must be forwarded to the Commission as part of the notice.

Several comments requested that the Commission add a provision to protect the confidentiality of material submitted under § 274.104, which material may include trade

secrets or other sensitive information. The Commission agrees and, accordingly, has added a provision to protect such material in § 275.206.

Section 274.105 provides an option to the procedures prescribed in § 274.104. If an agency chooses to adopt the § 274.105 option, it may file with the Commission a report in which it undertakes to make the necessary determinations and which includes a description of the procedures which it would follow in making them. The jurisdictional agency would then be relieved of the obligation to describe its procedures in each case.

Two comments requested the Commission to add provisions to Part 274 governing certain aspects of the proceedings before the jurisdictional agencies. One comment suggested that the Commission require the jurisdictional agencies to hold full adjudicatory hearings on delegated determinations and allow gas consuming states to participate as a party in interest to the hearings as of right. The other comment suggested that the Commission adopt procedures allowing distribution companies and state commissions and agencies to intervene and have the rights of full parties in interest in hearings held in gas producing states, and that the Commission's "Rules of Practice and Procedure" be made applicable to the

hearings before commissions and agencies in other states. The Commission has rejected these suggestions because it does not believe that it has the statutory authority to determine the nature of the proceedings before the jurisdictional agencies. Section 503(c)(3) of the NGPA states:

> Determinations of a Federal or State agency referred to in subsection (a)(1) shall be made in accordance with the procedures generally applicable to such agency for the making of such determinations or comparable determinations under the provisions of Federal or State law, as the case may be, pursuant to which they exercise their regulatory jurisdiction. The Commission may prescribe the form and content of filings with a Federal or State agency in connection with determinations made under this section.

The Statement of Managers indicates that questions regarding procedures followed by the jurisdictional agencies are to be reviewed directly by the state or federal court having jurisdiction to hear such appeals in accordance with applicable state or federal law. S. Rep. No. 95-1126, 95th Cong., 2d Sess. 119(1978). Since Congress specifically provided that proceedings before the jurisdictional agencies were to be in accordance with their generally applicable procedures and that review was to be by the courts, the Commission lacks the statutory authority to prescribe the procedures suggested in the comments. In

view of the Commission's lack of authority, comments concerning proceedings before jurisdictional agencies should be directed to those agencies.

PART 274 - SUBPART B

Subpart B of Part 274, prescribes the filing requirements which must be met by an applicant to obtain a determination from a jurisdictional agency.

Section 274.201 sets forth general rules applicable to all applications, including persons who may file for a determination, the persons who must sign the filing, and the requirement that an applicant give notice of the filing to purchasers.

A number of comments suggested changes in § 274.201(b) with respect to who may file. Several comments requested that the operator be designated as the responsible person. Other comments stated that designating the operator as the responsible person would be too limiting. Concern over non-operating interests was also expressed.

After consideration of these comments, the Commission determined that this is a matter best left to the jurisdictional agency. Accordingly, the section has been revised to provide that the application may be submitted by that person whom the jurisdictional agency identifies as eligible to make filings.

Comments addressing § 274.201(c) indicated that requiring the signature of a "responsible officer of the corporation" was too limiting. The Commission agrees and has modified this section to permit a "responsible official of the corporation" to attest to the application. It should also be noted that this section has been modified to delete the attestation requirement.

One comment requested that § 274.201(e), "Notice to Purchasers," be expanded to include notice to all working interest owners. Although the Commission has decided not to expand the notice requirements in this manner, it notes that such a requirement might be imposed by the jurisdictional agency. Also the applicant may want to give such notice as a prudent business practice.

Section 274.201(e), as proposed, required that the applicant provide the purchaser(s) with a copy of the application. Upon further consideration, it has been determined that the purpose of this paragraph can be served by requiring only that the applicant provide the purchaser with a copy of FERC Form No. 121.

One comment requested the addition to the general provisions of a section allowing the filing of simultaneous multiple applications for determinations. Permitting these filings appears to the Commission to be desirable;

there is clear legislative history that such filings were comtemplated under the NGPA. However, since this matter involves procedures of jurisdictional agencies, whether such filings will be permitted is a matter which is better left to the discretion of such agencies.

One comment suggested that the purchaser should be required to play a larger role in the regulatory scheme by concurring in a producer application for a determination with regard to a sale of at least 1,000,000 Mcf per year. The Commission recognizes the merits of a procedure which would involve the monitoring of applications by purchasers. Although this type of program will not be adopted at this time, purchasers are encouraged to participate in the determination process to the extent permitted by the jurisdictional agency.

Several comments suggested that the Commission recognize the problem of confidentiality which was not addressed in the proposed regulations. The Commission agrees that this problem should be addressed and has included such a regulation in § 275.206. Since this rule was not previously proposed, the Commission is particularly interested in comments on the procedures contained in this rule.

Section 274.202 sets forth filing requirements for a determination that gas qualifies as new natural gas under section 102 of the NGPA. The regulations require an applicant to present evidence substantiating, to the extent practicable, each element of proof required for a determination of eligibility. Section 274.202(c)(1) is typical of other sections in this subpart in that the applicant must file certain specific documents as well as the oath statements. Each applicant filing for a new onshore well determination under § 274.202(c)(1), must file a location plat locating his own well and any other well within the 2.5 mile radius which is producing or has produced natural gas after January 1, 1970. In order to demonstrate that none of these wells is a marker well, an applicant must consult available, relevant records which would indicate whether any of these wells produced in commercial quantities at any time during the period from January 1, 1970, to April 20, 1977. Rather than require an applicant to file all production records with the application, however, the proposal requires the filing of a statement under oath describing the applicant's search of records, and attesting to the fact that none of these wells is a marker well.

Applicants filing under § 274.202(d) for a new onshore reservoir determination must submit geological information

which demonstrates that production is from a new onshore reservoir. This information is accompanied by a sworn statement similar to that required by paragraph (c). In all cases, individual agencies may, if they wish, require certified copies of all documents relied upon by the applicant.

Several comments recommended the filing of the OCS lease in lieu of the proposed filing requirements. Acknowledging this recommendation, the Commission has changed the filing requirements to require a copy of the OCS lease or such other identification of the lease as permitted by the jurisdictional agency together with an oath statement by the applicant that the gas is produced from a new OCS lease.

Several comments suggested modification of the diligent search requirement for new onshore wells and new onshore reservoirs. Comments stated that in some instances royalty records do not exist and tax records were not public. Other comments stated that the search should be limited to pertinent records; still others stated that the search of production, severance tax and royalty records should be illustrative and not mandatory. In response to these comments, these requirements have been modified in all sections to require a "diligent search of all records (including but not limited to production, state severance tax, and royalty payment records)

which are reasonably available and contain information relevant to the determination of eligibility."

One comment suggested a modification in the "inconsistent information" language of the oath statements required for new onshore wells and new onshore reservoirs. The regulations now require that the applicant state under oath "that applicant has no knowledge of any other information not described in the application which is inconsistent with his conclusion." (§§ 274.202(c)(1) (v)(D) and (c)(2)(vi)(D)).

One comment regarding new onshore reservoirs suggested the addition of surface pressure surveys to the list of geological data which must be consulted if readily available. The regulation now requires in § 274.202(d)(1)(ii)(B), "bottom hole pressure surveys, or surface pressure surveys."

Several comments objected to the task of locating all wells within a 2.5 mile radius on the location plat (§ 274.202(c)(1)(iii)) or identifying all marker wells on a location plat (§ 274.202(c)(2)(iii)). Recognizing that this filing requirement may be unnecessarily burdensome, the regulations now require identification of those wells which are producing or have produced natural gas after January 1, 1970, within the 2.5 mile radius and a specific identification of all marker wells within the 2.5 mile radius.

Section 274.203 sets forth filing requirements for a determination that gas qualifies as a new reservoir on old OCS leases under section 102 of the NGPA. The regulations require the applicant to file geological information to the extent necessary to support such a determination. In addition to the submission of geological information, the applicant must file a statement under oath containing the basis for the conclusion that the gas is produced on an old lease on the OCS from a reservoir not discovered before July 27, 1976. If the date of penetration of the reservoir is prior to July 27, 1976, certain requirements of OCS Order No. 4 must be met in order to qualify for this determination.

Comments similar to those addressed in § 274.202 which requested modification of the diligent search filing requirement and the "inconsistent information" oath statement were filed. The changes noted above have been made.

Section 274.204 sets forth filing requirements for a determination that the well qualifies as a new onshore production well under section 103 of the NGPA. The regulations require the applicant to file, inter alia, the well completion report, a location plat which identifies the subject well and all other wells within that proration unit. In addition, the applicant must file a statement under oath,

that the surface drilling of the well was begun on or after February 19, 1977, that the well satisfies well-spacing requirements and was not within an existing proration unit. If the applicant is seeking a determination for a new well drilled in an existing proration unit, the applicant must also demonstrate that the new well is necessary to effectively and efficiently drain a portion of the reservoir covered by that proration unit.

Only comments similar to those addressed in § 274.202 were suggested for this section.

Section 274.205 sets forth filing requirements for a determination that gas qualifies as deep high-cost gas under section 107 of the NGPA. The regulations require the applicant to file, inter alia, the well completion reports, the well logs or well servicing company reports or such other information necessary to substantiate the depth of the well. In addition, the applicant must file a statement under oath that the surface drilling began on or after February 19, 1977 and that the well is completed at the depth of at least 15,000 feet.

Based on a concern for protecting confidential filings, several comments suggested the deletion of well logs as a filing requirement for high-cost gas. The Commission

recognizes the importance of protecting proprietary interests and the need for confidentiality. The regulation has been modified to require "well logs, or well servicing reports or such other information which will corroborate the depth of the completion location reported in the well completion report." The final phrase of the oath statement was modified slightly to read, "that he has no knowledge of any other information not described in the application which is inconsistent with his conclusions."

Section 274.206 prescribes the filing requirements for applications for stripper well determinations. To a greater extent than other sections of this subpart, this section requires the submission of actual documents rather than oath statements. In addition to the documents, applicants must submit an affidavit attesting to the well's eligibility.

After reviewing the comments, we believe that § 274.206(a)(6) should be modified. We adopt the comment suggesting that the Commission change this section to provide that an applicant must file the production records for crude oil produced during the 90-day period on which the application is based rather than the 12-month period immediately preceding the date of filing. We believe this change is consistent with section 108 of the NGPA.

Several comments objected to the requirement in § 274.206(b) that pipeline companies monitor the production

of natural gas from stripper wells. It was argued that the qualification of wells as strippers is a responsibility of the producers and not the pipelines. However, we find that to require the pipeline purchaser to monitor its purchases of stripper well natural gas is not unduly burdensome. Further, we believe that it is consistent with the obligation owed to their purchasers to insure that all gas purchases are properly priced.

One jurisdictional agency suggested that the Commission should require one-page production decline curves instead of monthly production reports. In those instances where a jurisdictional agency prefers to use a production curve, it may seek Commission approval of this alternative filing requirement under § 274.207.

Section 274.207 entitled "Alternative filing and notice requirements," acknowledges that due to differences in state records, some jurisdictional agencies may want to require other documents than those enumerated in the interim regulations. Under this section, a state agency may propose alternative filing requirements which might replace some or all of the requirements specifically provided in Subpart B. If the Commission concludes that the alternative requirements will satisfy its evidentiary requirements, the Commission may approve the alternative requirements. Upon such approval,

may approve the alternative requirements. Upon such approval, applicants for determinations in that jurisdictional agency would file according to the alternative plan rather than under Subpart B. The section has been modified to permit jurisdictional agencies, subject to Commission approval, to provide different documents in their notification to the Commission of determinations from those now required. As jurisdictional agencies and the Commission develop experience under the NGPA, this section will provide needed flexibility.

Several comments suggested that the Commission should formulate alternative filing requirements for small producers to ease the burden of complying with Section 274, Subpart B filing requirements. While the Commission appreciates the concerns of the small producer, a specific regulation addressing small producers is not contemplated. However, the regulations do not prohibit the jurisdictional agency from adopting specific small producer filing requirements under the alternative filing requirements section provided the alternative filings constitute a reliable record upon which determination may be based.

PART 274 - SUBPART C

Subpart C of Part 274 briefly prescribes the procedures by which a jurisdictional agency may execute an agreement to waive its authority to make NGPA determinations. It implements section 503(c)(2) of the NGPA.

In order for a jurisdictional agency to waive its authority, it must enter into an agreement with the Commission. Under § 274.302, an agency may submit a request for waiver to the Commission. Section 274.302 also specifies the contents of such a request and requires an agency to state the reasons and the necessity for a waiver. If the Commission agrees to enter an agreement of waiver, it may do so on terms and conditions agreed to by the Commission and the jurisdictional agency. The provisions of § 274.303 specify the method of revoking or terminating the waiver agreement by the Commission or the jurisdictional agency. Section 274.304 provides that the Commission shall give public notice of all agreements of waiver and any termination or revocation of a waiver.

PART 274 - SUBPART D

Subpart D of Part 274 authorizes delegation to certain state regulatory agencies of the Commission's authority under Part 276 to receive filings under Part 276. Any such delegation is made by agreement with the state agency in accordance with section 501(c) of the NGPA.

PART 274 - SUBPART E

This subpart defines jurisdictional agency, contains a table of agencies by state, defines Federal lands, and provides for recognition of agreements between the United States Geological Survey and state jurisdictional agencies which would permit the state agency to make determinations under Part 274 respecting wells on Federal lands within the state.

PART 275 - SUBPART B

Subpart B of Part 275 prescribes the procedures governing Commission review of determinations by jurisdictional agencies. The regulations are promulgated under the provisions of section 503 of the NGPA and the general rulemaking authority of section 501(a) of the Act.

Section 275.201 provides that upon receipt of the notice of determination from a jurisdictional agency, the Commission will give public notice of the determination in the Federal Register. In addition to identifying the specific proceeding, the notice will indicate that the application and a copy or description of materials relied on by the jurisdictional agency in making the determination is available for inspection in the Commission's Office of Public Information, except to the extent such material is treated as confidential under § 275.206. The final rule is changed from the proposal to reflect the change to § 274.104 which no longer requires the complete record to be submitted by the jurisdictional agency.

Subparagraph (a) of § 275.202 tracks section 503(b)(1) and (2) of the statute in setting forth the standards which govern Commission review. The determination of the jurisdictional agency will become final 45 days after the

Commission receives notice of the determination unless within that time the Commission issues a preliminary finding and notice that the determination was not supported by substantial evidence or that there is evidence in the Commission's records which was not before the jurisdictional agency and which is inconsistent with the determination.

One comment suggested that the Commission should delete paragraph (b) of the proposal which provided that the Commission would return determinations to jurisdictional agencies if such determinations were based on applications which did not satisfy applicable requirements. After consideration of this matter, the Commission has decided that a more appropriate procedure is to provide that the 45-day review period will not begin if the Commission notifies the jurisdictional agency that the notice is incomplete in certain respects. This provision is set out in § 275.202(b). This provision accomplishes the same purpose as the proposal and gives the jurisdictional agency an opportunity to perfect its notice to the Commission.

Paragraph (c) of § 275.202 changes the proposal by providing that the Commission will publish notice of a preliminary finding in the Federal Register and will also post the notice in its Office of Public Information. The notice will contain the reasons for the preliminary finding. This provision was

added in the final rule in response to comments suggesting that the views of interested persons and state or federal agencies should be allowed subsequent to a preliminary finding.

Paragraph (d) of § 275.202 provides that any state or federal agency, or any interested person may submit written comments with respect to a preliminary finding. The rule further provides that any jurisdictional agency, any state agency, any person who participated in, the proceeding before the jurisdictional agency and any person who has filed a protest may request a conference with the Commission staff, which request will be granted, if timely made. In response to one comment, the final rule has increased the time period within which comments may be filed to 30 days.

As noted above, the changes in procedure were made in response to a comment indicating that interested persons or state agencies may not be able to participate before a jurisdictional agency or be able to prepare a protest to the Commission within 15 days after public notice of a jurisdictional agency determination. Therefore, they might be effectively excluded from participation. The revised procedures provide the greatest opportunity for public involvement possible in the limited time for Commission review. Another comment

suggested that participation in proceedings before the Commission be limited to agencies or persons who had participated in proceedings before the jurisdictional agency, or who could show good cause why they did not participate. While the Commission agrees that participation before the jurisdictional agency would be preferable, it cannot guarantee, or provide procedures for such participation. Further, in view of the statutory time constraints, the Commission cannot undertake to make individual findings as to whether the person or agency had good cause for not participating before the jurisdictional agency. Accordingly, the Commission has rejected the suggestion to limit participation in its proceedings.

Section 275.202(e), consistent with sections 503(b)(1)(B), and (b)(2)(B) provides that the Commission will issue a final order within 120 days after issuance of a preliminary finding. While the statute requires a final order only when the Commission reverses or remands a decision, the regulation provides that the Commission will issue such an order in any case in which a protest was filed and a preliminary reversal or remand was issued. The final rule differs from the proposal only to clarify the persons to whom notice will be given.

Under § 275.203 any person may file a protest with the Commission within 15 days after the Commission publishes notice of receipt of a determination by a jurisdictional agency. Any person protesting a determination must indicate whether it is alleged that the determination is not supported by substantial evidence or that there is inconsistent information in the Commission's files. It should be noted that under § 275.203(b) (iii), a protestor may submit information for inclusion in the Commission's public records. Accordingly, the data or information on which the Commission may rely in remanding a determination need not have been in the Commission's records at the time the jurisdictional agency made the determination.

One comment suggested that a provision be added to permit an applicant to respond to protests prior to the preliminary finding. The Commission has not adopted this suggestion because it has determined that to provide for such a response before the preliminary finding is impracticable in view of the short time within which the Commission must make its preliminary finding. The applicant's interests are adequately protected by the procedure permitting comments and conferences after the issuance of the preliminary finding.

Another comment objected to the procedure which allows a protester to submit information for inclusion in the Commission's public record for purposes of supporting a remand of the determination. The Commission has retained this procedure because it believes its procedure should encourage interested persons to submit any relevant information which is likely to result in a correct final determination.

One comment suggested that the Commission require protests to be filed under oath. The Commission has not implemented this suggestion because it does not feel that such an oath is necessary. If, after gaining some experience in administering the Act, the Commission feels that such an oath is necessary, it will amend its regulations to include the suggested provision.

Under section 503(d), final determinations are binding unless based on an untrue statement of fact, or based on a record from which a statement of material fact was omitted. Section 275.205 of the regulations sets forth a procedure for reopening determinations on those grounds. The Commission may, at any time, on its own motion or in response to a petition, reopen a determination if it appears that the necessary grounds exist.

If the Commission does reopen a determination, it will give notice to the jurisdictional agency involved as well as to all persons who participated in the prior proceeding. Within 150 days of the Commission order reopening a determination the Commission will issue a final order after giving all persons who received notice an opportunity to express their views. If the Commission finds that the requisite grounds exist, it will vacate the determination and order remedies, including refunds, as it deems appropriate.

Confidentiality. Section 275.206(a) provides that the Commission will accord confidential treatment to any information submitted to the Commission by a jurisdictional agency under § 274.104, if the agency protected the information as confidential and if the grounds for confidential treatment fall within one of the nine exemptions of the Freedom of Information Act (5 U.S.C. 552(b)). Paragraph (b) provides that if the Commission receives a request for disclosure of the information protected as confidential under paragraph (a), it will determine whether the information is exempt from public disclosure under the Freedom of Information Act. If the information is determined not to be exempt, it will be released to the public. If it is determined to be exempt, the information will not be released unless the Commission determines

that its conduct of the proceedings requires the disclosure of the information to the public or to particular parties, subject to conditions prescribed by the Commission. The person who submitted the information will be given at least 10 days notice before the information is made public. This section of the regulations was not in the proposed rules. Several comments suggested that the Commission add a provision to protect the confidentiality of material submitted by the applicant or contained in the materials submitted by the jurisdictional agency to the Commission, since the release of such information could inflict substantial competitive harm upon the applicant. The Commission agrees with the comments and accordingly has added this section to the final rules.

PART 276 - SUBPART A

Subpart A of Part 276 sets forth reporting requirements applicable to first sales of natural gas sold under existing intrastate contracts and intrastate rollover contracts, as well as first sales of other categories of natural gas (Subparts E, F, and I of Part 271).

For each first sale under these subparts of Part 271, the seller is required to report certain information. If the purchaser of gas under section 105 and 106(b) of the NGPA is a pipeline, the purchaser must file certain reports. Finally, in some instances, sellers of less than 10,000 MMcf of natural gas per year may elect to make oath filings instead of detailed reports.

Under § 276.102 a seller of natural gas under an existing intrastate contract must file an annual report setting forth detailed contract information as well as an oath filing that the information in the report is true, and that sales in the reporting period comply with the NGPA and Subpart E of Part 271. Successive annual reports need not restate previously reported information. The seller must also undertake to retain all records containing information reported.

If the sale is to an interstate or intrastate pipeline, the pipeline, rather than the seller, is responsible for filing the contract information, as well as an oath statement attesting to the accuracy of the information so reported. If a pipeline purchaser makes the principal filing, the seller must still file a statement under oath that the sale complies with the NGPA and Subpart E of Part 271, and that the seller undertakes to retain records which reflect the detailed contract information required to be reported by the purchasing and reporting pipeline.

Reports required to be filed with respect to sales under intrastate rollover contracts are essentially the same as for sales under existing intrastate contracts, with appropriate modifications. These reporting requirements are set forth in § 276.103.

The annual report requirements with respect to sales under Subpart I of Part 271 are set forth in § 276.104. The report must be filed by the seller in all instances and must contain detailed information with respect to the sale. The seller is also required to make an oath statement that the gas does not qualify under any subpart of Part 271 which provides a maximum lawful price lower than that provided under Subpart I, and that, if the gas was committed or dedicated to interstate commerce, a notice of rate change has

been filed pursuant to § 154.94. The oath filing must also contain a statement regarding compliance with the NGPA and the requirements of Subpart I and must attest to the truth of the information reported.

Sellers who sell less than 10,000 MMcf per year may elect to comply with reduced reporting requirements with respect to sales under Subparts E and F of Part 271 to purchasers other than a pipeline. Instead of the detailed information otherwise required, these sellers may file an oath statement attesting to compliance with the NGPA and the applicable regulations. Such sellers must also undertake to retain books and records containing the requisite information.

As issued, the interim regulations in this subpart reflect several substantive changes. Sections 276.102(b) and 276.103(b) have been amended to impose two new reporting requirements. The requirement that the highest price per MMBtu charged and collected during the reporting period be reported for sales under Subparts E and F of Part 271 has been added in order to enable the Commission to conduct a more meaningful review of the reports filed. A requirement that all contract provisions be identified which were executed during the reporting period and which obligate a new purchaser to incur increased production-related costs has

been added to correspond to revisions made in §§ 271.505 and 271.604. In addition, all persons making first sales under sections 105, 106(b), and 109 of the NGPA must retain records containing the information relevant to those sales under § 276.107.

One comment on this subpart of the regulations challenged the statutory sufficiency of an audit procedure, alleging that the Commission must make separate determinations regarding each seller's ability to charge those maximum lawful prices prescribed under sections 105, 106(b), and 109(a)(1) and (3) of the NGPA. However, the statute does not specifically provide for nor require such determinations. Given the administrative burdens attendent on making such determinations, the delay which such a determination procedure would cause, and the efficacy of the current reporting system in providing the information necessary for auditing to ensure compliance with the pricing limitations in the statute, the Commission can foresee no valid reason for instituting such a determination procedure.

Correspondingly, the Commission rejects the suggestion by a second commentor that all intrastate producers be relieved of the burdens imposed by such reporting requirements for the next several years, and be required, instead, merely to retain the relevant records for that period until the need for such data is demonstrated through the

Commission's experience in enforcing the NGPA. The Commission considers the auditing process to be essential to ensuring that those persons making first sales comply with the new pricing system under the NGPA and Part 271 and emphasizes that, because compliance with the statute is an essential element to its workability, the pricing provisions must be enforced as soon as possible.

Another comment suggested that purchasers rather than sellers be required to fulfill all reporting requirements imposed by this subpart. The Commission has already implemented such a policy, where it deems it appropriate, in order to assist the Commission in enforcing compliance with sections 105 and 106(b) of the NGPA. The Commission concludes that pipelines are the appropriate entities for filing reports concerning those sales. As purchasers of the natural gas, the pipelines have an immediate economic interest in determining that a lawful price is charged. Accordingly, they should closely scrutinize any price charged by a seller in order to determine whether that price is consistent with the maximum lawful prices permitted by the NGPA and Part 271. Since the pipelines have the economic interest, the Commission believes it will receive the most accurate information from their filings and that such accuracy will more adequately ensure that maximum lawful

prices are not exceeded by sellers. By requiring pipeline to make filings under this subpart, the Commission has also more equally distributed the burden of making filings under the NGPA. Because the information required in this subpart will have been compiled incident to the pipeline's own audits, the burdens imposed should be limited.

Such filings by pipelines are appropriate from a legal as well as a policy perspective. Section 508(b) of the NGPA provides that:

> [i]n order to obtain information for the purposes of carrying out its functions under this Act, the Commission shall have the same authority as is vested in the Secretary [of Energy] under section 301(a) of the Department of Energy Organization Act with respect to the exercise of authority under section 11(b) of the Energy Supply and Environmental Coordination Act of 1974 and sections 13(b), (c), and (d) of the Federal Energy Administration Act of 1974.

The Congressional grant of authority in section 508(b) of the NGPA is broad. Section 301(a) of the Department of Energy Organization Act vests in the Secretary of Energy all of the functions vested by law in the Administrator of the Federal Energy Administration or the Federal Energy Administration; the Administrator of the Energy Research and Development Administration or the Energy Research and Development Administration; and the functions vested by law in officers and components of either such Administration.

Thus, the Commission may exercise these same powers in order to obtain information for the purposes of carrying out its functions under the NGPA. One such function is enforcement under section 504 of the NGPA of the pricing rules.

The information gathering powers enumerated in § 508(b) permit the Commission to carry out this function by requiring filings by pipelines. Section 11(b)(1)(A) of the Energy Supply and Environmental Coordination Act of 1974 permits the Commission "to require by rule, any person who is engaged in the production, processing, refining, transportation by pipeline or distribution (at other than the retail level) of energy resources to submit reports. . . ." [Emphasis supplied] Moreover, section 13(c) of the Federal Energy Administration Act of 1974 likewise provides for certain information gathering powers:

> [t]he Administrator [i.e., the Commission] may require, by general or special orders, any person engaged in any phase of energy supply or major energy consumption to file with the Administrator in such form as he may prescribe, reports or answers in writing to such specific questions, surveys, or questionnaires as may be necessary to enable the Administrator to carry out his functions under the Act. Such reports and answers shall be made under oath, or otherwise, as the Administrator may prescribe, and shall be filed with the Administrator within such reasonable period as he may prescribe. [Emphasis supplied]

The Commission has decided to exercise its information gathering powers in a manner that requires pipeline companies to submit the reports required by Subpart A of Part 276 of the regulations.

Another comment suggested that the category of sellers exempted from certain filing requirements under §§ 276.102 and 276.103 be revised to coincide with the definition of small producers in § 271.402(b)(9). That provision has now been revised, however, the use of the definition in paragraph (b)(9) would not cover all sellers intended to be included in the exemption. It would eliminate all sellers who were not also producers but who would qualify as having made a first sale subject to the pricing provisions of the NGPA. The Commission intends to establish in this regulation a simple volumetric limitation based on which sellers may be exempted from providing detailed contract information pursuant to this subpart. The purpose of the exemption is substantially different from the pricing considerations which were imposed by the NGA and which underlie the provisions of § 271.402(a). The definition in § 271.402(b)(9) only incidentally concerns filing requirements and was intended to implement under the NGPA a pricing system established under the NGA.

PART 284

Part 284 implements sections 311(a) and 312 of the NGPA. Subparts A and B govern transportation of natural gas by interstate and intrastate pipelines. Subpart D establishes requirements governing the assignment of producer contracts by intrastate pipelines. The Commission has reserved Subpart C which, when implemented, will apply to intrastate pipeline sales under section 311(b) of the NGPA.

Special mention should be made of the Commission's decision to reserve Subpart C at this stage. A number of comments were directed to the proposed implementation of section 311(b) in response to the Commission's notice of proposed rulemaking on November 13, 1978. These comments suggest that substantial revision of the proposal will be required. Thus, the Commission intends in the near future to issue a revised notice of proposed rulemaking. However, there was inadequate time to consider and deliberate on the revisions suggested so as to allow the Commission to issue the revised proposal at this time. It remains the Commission's intention, nonetheless, to implement section 311(b) effective March 1, 1979.

In the interim, intrastate pipeline sales will be governed under the emergency program established under the Natural Gas Act. Of course, assignments by intrastate pipelines may be made beginning on December 1, 1978, pursuant to the provisions of Subpart D which implements section 312 of the NGPA.

PART 284 - SUBPART A

This subpart governs the transportation of natural gas by interstate pipelines on behalf of intrastate pipelines and local distribution companies pursuant to the terms of section 311(a)(1) of the NGPA. Two mechanisms are established. The first is self-executing and allows transportation arrangements to be entered into without necessity of prior Commission approval for periods not in excess of two years. The Commission has also added a provision that would permit transportation arrangements for fixed periods in excess of two years. In this latter case, however, application must be made to the Commission and prior approval obtained. The Commission believes that it is appropriate to review and evaluate long-term transportation arrangements in view of the potential impacts of such arrangements on the operation of on an interstate

pipeline's system. Arrangements for fixed terms in in excess of two years may involve significant investments in the construction and operation of facilities. This consideration also supports the approach taken here by the Commission.

Several commentors suggested that the Commission should remove the two-year limitation and rely instead on its ability to impose terms and conditions which would have the effect of terminating an arrangement if the Commission concluded that a continuance of the arrangement was not in the public interest. We do not believe that is a sensible regulatory approach to this problem. As noted above, long-term transportation arrangements may be expected to contribute to the need for future investment which will require amortization over a period of years and may impose a burden upon all customers of the pipeline. Serious questions of equity and practicality would attend any attempt to abruptly terminate an arrangement which had been entered into in contemplation of its continuance for a period sufficiently long to justify the investment. Moreover, we doubt that parties would enter into long-term arrangements if they were subject to the jeopardy that the Commission may, on its own motion and at any time, terminate the arrangement.

The Commission wishes to emphasize that the two-year limitation applicable to transportation arrangements which may be entered into without prior Commission approval should not be read as indicating a predisposition on the part of the Commission against longer-term arrangements. Indeed, the Commission is well aware that the NGPA seeks to strike down the jurisdictional barriers which have precluded interstate and intrastate pipelines from taking advantage of the most economic and efficient means of transporting natural gas. Sections 311(a)(1) and 311(a)(2) provide the Commission with important new authorities designed to achieve a national transportation system with its attendant economies and efficiencies. On the other hand, transportation arrangements for fixed periods greater than two years contemplate service periods which may so significantly affect a pipeline's system operation as to require prior Commission scrutiny and approval. It is for these reasons that the Commission has chosen the two-pronged mechanism contained in Subpart A and Subpart B of Part 284.

Other than the addition of the application procedure for transportation arrangements in excess of two years, only minor revisions have been made to the proposed regulation. The most significant is the addition of provisions

to § 284.103 which would permit an interstate pipeline to retain revenues in excess of 1 cent per Mcf if it is able to demonstrate that the amounts retained represent actual out-of-pocket expenses in excess of the 1 cent allowance. The Commission notes, parenthetically, that the 1 cent per Mcf allowance for out-of-pocket costs derives from the Commission's experience in a number of individual cases under the Natural Gas Act which evidenced that the 1.0 cent per Mcf reasonably represented the level of out-of-pocket costs normally incurred by interstate pipelines in rendering transportation service. But, we recognize that individual transportation arrangements occurring under Subpart A may involve the incurrence of out-of-pocket expenses greater than 1.0 cent per Mcf. Accordingly, the Commission will permit an allowance in excess of 1 cent per Mcf provided the pipeline is able to substantiate greater out-of-pocket cost.

Section 284.104(c) has been revised, in response to comments, to provide that the terms and conditions which the Commission may impose by rule or order, under the section, shall be prospective. Section 284.106(d) has been revised to clarify that the final report is required only after the termination of an extension where one has been entered into in accordance with § 284.105.

Subpart A provides that interstate pipelines engaging in transactions under this subpart may recover the costs of providing the service including the retention of any revenues where such transportation transactions have been reflected in the pipeline company's rates either through the crediting of revenues or the inclusion of the transportation volumes in billing determinants.

PART 284 - SUBPART B

This subpart governs the transportation of natural gas by intrastate pipelines on behalf of interstate pipelines and local distribution companies served by interstate pipelines under section 311(a)(2) of the NGPA. Sections 284.122 and 284.127 have been revised to conform to §§ 284.102 and 284.107 of Subpart A. The considerations which prompted the Commission's decision under Subpart A apply equally here. Parity of treatment of interstate and intrastate pipelines under similar statutoty provisions also support this decision.

Section 284.123(b)(1)(i) has been revised to provide for rates which are based on recovery of all costs which may be associated with the transportation function. Section 284.123(b)(2) has been added to govern those cases where the intrastate pipelines' transportation rates are not subject to the jurisdiction of an "appropriate state

regulatory agency." Section 284.123(d) provides that transportation rates computed in accordance with § 284.123(b)(1) are presumed to be fair and equitable and not in excess of the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service. This is consistent with and conforms to statutory language in section 311(a)(2) of the NGPA. Moreover, the Commission presumes that all revenues associated with those transportation transactions engaged in by regulated intrastate pipelines have been, or will be, considered by the appropriate state regulatory authority in establishing rates to be charged. This treatment would be consistent with treatment of interstate pipelines by this Commission.

Section 284.124(a) has been added; and § 284.124(c) has been revised to conform to the corresponding section in Subpart A. The initial report required by § 284.126(a) will be filed with the "appropriate state regulatory agency." This term which is also used in § 284.123 is defined in § 284.128. The filing of the initial report with the "appropriate state regulatory agency" is necessary to implement the provisions of § 284.123(c).

The Commission wishes to call special attention to certain features of the regulation under Subpart B. The provisions of § 284.123 governing the rates and charges by intrastate pipelines for transportation arrangements under this subpart have been revised to permit an intrastate pipeline to elect to base its rates upon the methodology and cost used in determining the allowance permitted by an appropriate state regulatory agency for city-gate service. The Commission understands from a number of comments received that in some cases, state regulatory agencies exercise cost of service type regulation at the distribution company level permitting an allowance for city-gate service rendered by intrastate pipelines. Thus, commentors have pointed out, the intrastate pipeline is effectively regulated albeit the state regulatory agency does not directly accept for filing and pass on "rates and charges for transportation" as such. Also, the Commission has modified § 284.123 to specify that in any case where an intrastate pipeline does not elect to base its rates upon the methodology and cost formulae contained in paragraph (b)(1) or where the intrastate pipeline is not regulated directly or indirectly on a cost-of-service basis, the pipeline may file proposed

rates and charges with the Commission supported by information showing that the proposed rates and charges are fair and equitable. Upon filing, the intrastate pipeline may commence the transportation service and charge the proposed rates subject to refund. It need not await approval or further action of the Commission. Paragraph (b)(2) also provides, however, that the Commission may order refunds of any amounts which it may, through subsequent procedures, determine to have been charged in excess of rates and charges which interstate pipelines would be permitted to charge for similar service or amounts which it determined to be in excess of those which have been shown to be fair and equitable.

A number of commentors were concerned that the Commission had not allowed an opportunity for the intrastate pipeline to earn a reasonable profit as required by section 311 of the NGPA. If the intrastate pipeline files its proposed rates and charges pursuant to § 284.123(b)(2), the intrastate pipeline, of course, would include a reasonable profit within its proposed rates. If, on the other hand, the intrastate pipeline elects the alternative procedures contained in § 284.123(b)(1), the reasonable profit is built into

the formulae contained in clauses (i) and (ii). In other words, the intrastate pipeline is permitted the same opportunity for profit as is permitted by the appropriate state regulatory agency under the methodologies used in designing rates or in determining the allowance referred to in those clauses.

As set forth in § 284.123(d), the rate charged by an intrastate pipeline which elects the procedures under paragraph (b)(1)(i) or (ii) is presumed to be fair and equitable and not in excess of the rates and charges to which interstate pipelines would be permitted to charge for providing similar service. The Commission has had considerable difficulty in determining a practical method for applying the statutory limitation on rates contained in section 311(a)(2). At this time, we have attempted to resolve this problem by presuming that if an intrastate pipeline is regulated on a cost-of-service basis, it would not be permitted to charge a rate which is greater than the rate which would be allowed an interstate pipeline similarly regulated on a cost-of-service basis. The Commission recognizes, however, that no two pipelines are alike and that rate schedules of interstate pipelines reflect the particular characteristics of the pipeline

and are tied to the size and length of the line, the load factor of its operation, the location and nature of its supply and the characteristics of its markets.

It is for these reasons that the Commission rejected suggestions made by some commentors that the Commission permit intrastate pipelines to merely select a rate schedule on file with the Commission governing transportation service by interstate pipelines. We are also in doubt as to how we would measure comparability of service in the case of pipelines which have substantially different investments, operations and costs. While we are not prepared to conclude that an approach of this nature cannot be fashioned, we must admit that we are unable to do so at this time. For this reason, the Commission invites interested parties to address this question in the extended comment period on the interim regulations.

PART 284 - SUBPART D

Subpart D implements section 312 of the NGPA which governs assignments of contractual rights to receive surplus natural gas by intrastate pipelines to interstate pipelines and local distribution companies. Rates charged for transportation services in connection with assignments

are determined in accordance with Subpart B. Changes made in that subpart have been reflected in similar provisions of § 284.164(a) and §§ 284.165(a)(5) and (e)(1)(v). The report requirements have also been reduced in response to comments received. No other significant changes have been made in this subpart.

PARTS 2 and 157

The Commission's existing regulations promulgated under the Natural Gas Act exempt from the certificate requirements under section 7 of that Act certain emergency transactions. These provisions, contained in 18 C.F.R. §§ 2.68, 157.22 and 157.29, permit the transportation and sale of natural gas in interstate commerce without prior certificate authorization from the Commission. Under these provisions, emergency supplies of natural gas have been obtained in substantial quantities in past winter heating periods and during times of summer storage fill at market prices in excess of otherwise applicable national or area rates governing jurisdictional sales.

It is generally acknowledged that these exemptions for emergency transactions have allowed interstate pipelines, distribution companies and others dependent upon interstate pipeline supplies to avoid, or at least alleviate, the consequences of severe supply shortages of natural gas in the interstate market. Nonetheless, a number of criticisms have been leveled at the existing program suggesting that it was subject to abuse and required administrative tightening.

Accordingly, on April 7, 1978, the Commission determined to review the current emergency program and issued a Request for Comments inviting interested persons to submit their views on the program and to offer suggestions for change. After the comments were reviewed and analyzed, the Commission issued a Notice of Proposed Rulemaking on August 14, 1978, and again requested comments. That proposal would have substantially changed the provisions of the Commission's current regulations applicable to emergency transactions.

Comments were received from parties representing a wide range of interests, including independent and associate producers, interstate and intrastate pipelines, distribution companies, industrial consumers and the public.

The August 14, 1978, proposal was described in substantial detail in the Notice of Proposed Rulemaking and no recapitulation or further elaboration will be attempted here. It is sufficient to note only that it would have imposed stricter requirements for participation in emergency transactions and would have added additional reporting requirements to allow the Commission to monitor more closely the activities of emergency purchasers and sellers.

Prior to final action by this Commission on the August 14, 1978, proposal, the Congress passed and the President signed into law the NGPA, which changed much of the statutory authority on which the proposed rulemaking had been based and established new congressional directives and policies governing the sale and transportation of natural gas. For this reason, the Commission determined on November 13, 1978, to publish a revised Notice of Proposed Rulemaking more consonant with the requirements and policies of the NGPA. Comments were to be submitted no later than November 20, 1978. The Commission determined that good cause existed to dispense with the full 30 day notice and comment period, inasmuch as the winter heating season had already begun and because the NGPA was to take effect on December 1 -- one month into the heating season.

Practical considerations preclude the Commission from attempting to restate or discuss the comments received since November 13, 1978, in the detail which in other circumstances would be appropriate. The Commission advises, however, that it has read and considered the comments received and made revisions that it considers appropriate and practical given the exigencies of the moment.

Because emergency transactions under the NGA have been overtaken by passage of the NGPA on November 9, 1978, we have determined to promulgate the revised regulations applicable to emergency transactions as interim regulations to be effective December 1, 1978. Accordingly, the revised regulations under the NGA applicable to emergency transactions are to be considered together with the implementing regulation under the NGPA and may be subject to further revision as the Commission may find appropriate after the extended comment period.

Revised Interim Regulations

The interim emergency regulations prescribed herein leave the current emergency program largely intact. The Commission acknowledges that there are deficiencies in the program which would require correction if it were to continue as a permanent feature of the Commission's regulations. However, that is not to be the case. Rather the Commission intends to continue the emergency interim regulations in their present form only through the current winter heating season.

The Commission intends to substantially revise and limit the applicability of the emergency program following the current winter heating season. We did not, therefore, consider it wise public policy to attempt major revisions

in a program which is to last for only a few additional months. Moreover, recognizing that we are already in the midst of the current heating season, it did not appear reasonable to risk the disruption and uncertainty as would attend a significant revision of the prior existing program.

Some further comment on the proposed duration of the emergency program prescribed herein is appropriate. As previously announced, the Commission intends to implement section 311(b) of the NGPA governing sales by intrastate pipelines effective March 1, 1979. Although not included in this stage of implementing regulations, the Commission intends in the near future to issue a revised notice of proposed rulemaking under Subpart C of Part 284 which will reflect changes in the original proposal.

In the future, therefore, intrastate pipeline sales and assignments, as well as transportation arrangements between and among inter- and intrastate pipelines and local distribution companies are to be governed by the NGPA regulations contained in Part 284.

Effective December 1, 1978, all first sales by natural gas producers are subject to maximum lawful prices and other aspects of the Commission's regulations implementing

the NGPA. Moreover, under the NGPA it is no longer necessary for producers to obtain certificates under section 7 of the NGA to commence sales in the interstate market, provided the natural gas was not previously committed or dedicated to interstate commerce. This is so whether producer sales are entered into for emergency purchases or otherwise.

Thus, an exemption from section 7 of the NGA is no longer required or appropriate for producer sales of natural gas not previously committed or dedicated to interstate markets. Accordingly, we have revised our existing regulations to remove those features applicable to producer sales.

Inasmuch as Part 284 is scheduled for full implementation on March 1, 1979, and because producer sales are now governed under the NGPA and not the NGA, the question occurs whether there is any continued need or justification for an emergency program under the NGA after the conclusion of this winter's heating season. The Commission specifically invites comments on this question. At the very least, it would seem that the emergency program, if it is to be continued at all, should be limited to circumstances involving a sudden unanticipated loss of supply or situations in which immediate action is required for protection

of life and health or the maintenance of physical property. The Commission would benefit from whatever guidance or suggestion is provided on this subject.

Brief Summary of Emergency Interim Regulations

Sections 2.68, 157.22 and 157.29 of the Commission's current regulations are preserved only to the extent that they apply to existing emergency transactions. Accordingly, the current regulations are to continue in effect and remain applicable to contracts executed before November 9, 1978, in the case of a first sale governed by the NGPA (which will include all producer sales), or before December 1, 1978, in any other case (including sales by intrastate pipelines whose sales are generally not considered first sales governed by the NGPA). The emergency interim regulations also add to the Commission's existing regulations under the NGA a new Subpart C which contains §§ 157.45 through 157.52.

Section 157.45 defines the purpose of new Subpart C and sets out the relationship of this subpart to other parts of the implementing regulations under the NGPA.

Section 157.46 contains definitions which establish the parameters of eligility for the exemption from section 7 of emergency transactions. The definition of emergency has been revised from the November 13 proposal

in a number of respects. Specifically the definition has been expanded to make clear that an emergency includes a sudden unanticipated loss of supply or increase in demand. An emergency qualifying under this section would also include situations where additional supplies are necessary to maintain deliverability from storage, or to replenish storage volumes in order to alleviate curtailment. Also, persons described in section 1(c) of the NGA have been included as qualified sellers and purchasers. This responds to a number of comments which has suggested the inclusion of so-called Hinshaw pipelines under the program.

In addition, the Commission has defined a "sale of emergency natural gas" to include an exchange of natural gas to alleviate an emergency, provided the volumes exchanged are paid back within 180 days after the termination of deliveries of emergency natural gas. The 180-day pay-back rule is designed to assure that the parties to the exchange are made whole prior to the commencement of the next winter heating season. The Commission, in addition, wishes to make clear that the emergency program contemplates the rendering of emergency storage service by local distribution companies as was permitted under § 2.68 of the Commission's Rules.

A number of comments expressed concern that the Commission may take action under its authority in

section 315 of the NGPA to specify a minimum contract duration in such a manner as to disrupt the emergency program. The Commission advises that, although it intends to act in the near future to implement section 315, any such specification of a minimum contract duration will operate prospectively only. Moreover, the Commission will give special consideration to the need to provide an exception to any minimum contract duration requirement for emergency transactions which by their very nature contemplate transactions of brief duration.

Section 157.47 contains the specific exemptions from certificate requirements under section 7 of the NGA. Only minor technical changes in this language have been made. Transporation by an interstate pipeline for another interstate pipeline or for a direct assignee is specifically exempted. Transportation by an interstate pipeline for a local distribution company or a person described in section 1(c) of the NGA is governed by Subpart A of Part 284. In this regard, the Commission should note parenthetically that although Hinshaw pipelines are not expressly governed by Subpart A of Part 284, the definition of local distribution companies under the NGPA specifically includes such persons.

The Commission wishes to call special attention to paragraph (c) of § 157.47. Under its terms, the Commission seeks to make abundantly clear that the Commission's jurisdiction under the NGA does not vest with respect to any transaction or person participating in an emergency transaction except to the extent provided in the emergency regulations themselves. Several comments expressed concerned that provisions in existing producer contracts which preclude intrastate pipelines from reselling natural gas in interstate commerce or commingling natural gas in interstate commerce could operate to prevent intrastate pipelines from fully participating under the emergency program. This should no longer be a matter of concern. Those provisions contained in producer contracts were apparently designed to guard against a producer's becoming unwillingly and unknowingly subject to the cost-based rate regulation of the NGA. Passage of the NGPA coupled with the limited vesting of Commission jurisdiction under paragraph (c) of § 157.47 should obviate those concerns.

Section 157.48 contains terms and conditions applicable to emergency transactions. The section has been revised to delete or modify language previously proposed in the August 14, 1978, Notice of Proposed Rulemaking.

The revisions and deletions were considered appropriate in light of the interim character of the revised emergency program. In response to comments, this section has been revised to clarify its scope and applicability and to include a provision which places on the person for whom the emergency natural gas is acquired and transported, responsibility to provide volumes for compressor station fuel and line losses.

Section 157.49 establishes requirements which govern the rates for emergency transactions. No significant change has been made in the language. The Commission has determined to keep the presumption of prudence provided at paragraph (b) in cases where the purchased gas cost for emergency natural gas supplies does not exceed the maximum lawful price specified in § 271.202 of Subchapter H applicable to "new gas".

The Commission wishes to emphasize that this is a rebuttable presumption of prudence and is not intended to operate as a floor, as some comments suggested. Moreover, nothing in this section will operate to preclude an interstate pipeline from availing itself of the opportunity to establish that a rate in excess of the new natural gas price was prudent in the circumstances.

The Commission has significantly revised the treatment of revenues contained in § 157.50. Under its terms the interstate pipeline would not be required to credit revenues if its actual out-of-pocket expenses exceed the one cent per Mcf allowance or if the retention of revenues did not provide double recovery. Various formulas are contained in paragraphs (b), (c), (d) and (e) of this section to carry out this intent.

Section 157.51 contains reporting requirements for emergency requirements for emergency transactions. The Commission has revised the quarterly report requirement to limit it to calendar quarters occurring in 1979. Sections 157.52, regarding a waiver of requirements for emergency transactions, and 157.53, relating to certain exemptions for drilling, testing or purging of pipeline facilities are prescribed without revision.

III. PUBLIC PROCEDURE

Subchapters H and I of Title 18 were published in the Federal Register as a notice of proposed rulemaking at 43 FR 53270 on November 15, 1978. That proposal included the following description of the procedures the Commission had applied and would apply to the promulgation of final regulations implementing the Natural Gas Policy Act:

> Although the NGPA was not enacted until November 9, 1978, most of its provisions become effective on December 1, 1978. On that date, persons affected by the Act, including a large portion of the natural gas industry not previously regulated by the Federal government, will be subject to a comprehensive and complex new regulatory structure. For reasons set out more fully below, regulations implementing the Act must be effective on December 1, 1978, both for guidance to those regulated and to insure compliance with the new law.
>
> When it became apparent that the period between final enactment of the law and its effective date would not provide sufficient time for the normal rulemaking procedures, the Commission established the following schedule and procedures.
>
> The Commission has been meeting in public session since November 1, 1978, in order to discuss regulations drafted by the staff to implement the NGPA. Prior to the first meeting, the Commission made copies of the various proposals under consideration available to the public. As successive drafts were completed, these too were released prior to Commission discussion. During all of this period, certain members of the Commission staff were publicly designated as contact persons to answer legal and technical questions concerning the implementation of the Act.

> For other categories, pricing determinations must be made by State or Federal agencies with regulatory authority over the production of natural gas. Unless the interim regulations are available on December 1, 1978, members of the public whose sales are governed by provisions of the Act will not be able to ascertain the applicable maximum lawful price governing their sales of natural gas. Indeed, some sellers and transporters of natural gas could unknowingly be in technical violation of the law. Purchasers may be uncertain whether prices requested exceed the prices permitted under the law. Similarly, agencies which must make determinations with respect to eligibility for prices established by the Act must be made aware of Commission requirements applicable to these determinations, including the manner in which the Commission will review such determinations.
>
> After consideration of the problems associated with any delay in promulgating implementing regulations, the Commission has reached the conclusion that because the regulations must be effective by December 1, 1978, good cause exists to limit as described above notice and public procedure on this proposal. Full notice and public procedure on the proposal at this time, which as a practical matter would result in a delay of the effective date of the regulations beyond the effective date of the NGPA, are impractical and contrary to the public interest. It should be emphasized that all of the procedures described above will provide the fullest possible opportunity for public participation during the entire process leading to the promulgation of final regulations.

The Commission intends to promulgate interim regulations on November 27, 1978. The interim regulations will be effective on December 1. A 60-day comment period will be afforded with respect to the interim regulations and public hearings will be held. The interim regulations will, after the 60-day period and after all views received since November 1, 1978, have been considered, be modified to the extent such comments and the Commission's experience under the interim regulations indicate the modification is appropriate.

The proposal published today provides for a comment period ending on November 20. The Commission is aware that in view of the significance and complexity of these regulations, comments will be extensive. To the extent possible, comments received before November 20 will be reviewed and appropriate changes incorporated into the interim regulations. As stated above, all comments will be retained and considered together with the additional comments received during the 60-day period afforded for comments on the interim regulations. The Commission believes that to the extent practicable, the procedures being followed with respect to these regulations are those best designed to insure maximum public participation prior to the time when the interim regulations must be effective.

In establishing this notice and comment procedure, the Commission has considered a number of factors. Most important, as stated above, is the fact that most of the Act's provisions become effective on December 1, 1978, including provisions establishing maximum lawful prices applicable to first sales of natural gas delivered after November 30, 1978. Some of the prices which may be charged for natural gas deliveries under the Act are established by reference to existing prices.

CONSIDERATION OF COMMENTS

A substantial number of written comments have been received in response to the notice of proposed rulemaking. In addition, the staff met informally, prior to the close of the comment period, with representatives of state agencies, consumer groups, and the industries affected by the proposed regulations. A notice, describing these meetings and inviting any interested person to meet informally with designated members of the Commission staff was issued on November 17, 1978. Minutes of these informal meetings, together with any written materials presented at these meetings, have been included in the public file. All comments received by the Commission by November 20, 1978, and to the extent possible, comments received after that date, have been considered. In the limited time available to the Commission and its staff, changes in the regulations have been made. The major changes are noted in Section II of this preamble. The preamble also discusses a number of suggestions made in the comments which have not been incorporated into these regulations.

Because of the time limitation, some changes have been made, generally of a minor nature which are not discussed in the preamble, and the reasons for not

adopting some suggestions are not mentioned. To the extent possible, significant changes have been explained. The Commission wishes to emphasize that all comments will be retained and reconsidered with comments received as a result of this publication. Accordingly, suggested changes, deletions or additions, not adopted by the Commission in these rules, will, in light of additional information received in the next 60 days, be re-examined and possibly adopted as amendments to the interim regulations.

ADDITIONAL COMMENTS

In accordance with the procedures described below, the Commission solicits comments on all aspects of these interim regulations. It should be emphasized that the Commission intends to review the regulations in their entirety and make whatever changes it deems appropriate based on the comments already received, additional written comments, the views expressed in public hearings, and experiences under the regulations during the next 60 days.

Interested persons are invited to submit written comments on the regulations to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D. C. 20426. Comments should reference Docket No. RM79-3 on the outside of the envelope

and on all documents submitted to the Commission. To assist the Commission, it is requested that comments identify the section or subpart addressed, state whether the comments involve technical, legal, or policy matters, and if alternative approaches are suggested, provide proposed implementing language to the extent practicable.

Fifteen copies should be submitted. All comments and related information received by the Commission by January 31, 1979, will be considered prior to promulgation of revisions or amendments to these regulations.

PUBLIC HEARINGS

The Commission intends to hold a series of public hearings on these interim regulations, as required by section 502(b) of the NGPA. For the reasons stated above, however, the Commission finds that it is impracticable to provide an opportunity for oral presentation of data, views and arguments prior to the effective date of the regulations, and waives for 45 days the requirement of prior hearings under section 502(b). The dates and locations of the public hearings will be announced as soon as practicable.

EFFECTIVE DATE

As stated above, the Commission has determined that a delay of the effective date of the regulations beyond the effective date of the Natural Gas Policy Act is impractical and contrary to the public interest. Accordingly, the Commission finds that good cause exists for making the regulations effective on December 1, 1978.

(Natural Gas Act, as amended, 15 U.S.C. 717 et seq., Energy Supply and Environmental Coordination Act, 15 U.S.C. 791 et seq., Federal Energy Administration Act, 15 U.S.C. 761 et seq., Natural Gas Policy Act of 1978, P.L. 95-621, 92 Stat. 3350, Department of Energy Organization Act, P.L. 95-91, E.O. 12009, 42 F.R. 46267)

In consideration of the foregoing, Chapter I of Title 18, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Lois D. Cashell
Lois D. Cashell
Acting Secretary

PART 2 - GENERAL POLICY AND INTERPRETATIONS

1. Section 2.68 is amended by adding a new paragraph (c) to read as follows:

§ 2.68 Policy with respect to temporary emergency sales and deliveries of natural gas for resale in interstate commerce by persons with exemptions under the Natural Gas Act pursuant to section 1(c), and certain persons exempt under the Natural Gas Act pursuant to section 1(b).

* * * * *

(c) This section does not apply to any transaction other than an existing emergency transaction (as defined in § 157.46(i)).

PART 157 - APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

2. Section 157.22 is amended by amending a new paragraph (f) to read as follows:

§ 157.22 Exemption of temporary acts and operation.

* * * * *

(f) This section does not apply to any transaction other than an existing emergency transaction (as defined in § 157.46(i)).

3. Section 157.29 is amended by adding a new paragraph (e) to read as follows:

§ 157.29 Exemption of emergency sales or transportation.

* * * * *

(e) This section does not apply to any transaction which is not an existing emergency transaction (as defined in § 157.46(i)).

4. Part 157 is amended by adding new Subparts C (§§ 157.45 through 157.52) and D (§ 157.53), to read as follows:

SUBPART C -- EXEMPTION OF EMERGENCY SALE ARRANGEMENTS FOR NATURAL GAS FROM CERTIFICATE REQUIREMENTS

Sec.
157.45 Purpose and exclusion.
157.46 Definitions.
157.47 Exemptions from certificate requirements.
157.48 Terms and conditions of emergency transactions.
157.49 Rates for emergency transactions.
157.50 Treatment of revenues.
157.51 Reporting requirements for emergency transactions.
157.52 Waiver of requirements for emergency transactions.

§ 157.45 Purpose and exclusion.

(a) Purpose. The purpose of this subpart is to prescribe the conditions under which certain emergency transactions involving the construction and operation of facilities or the sale or transportation of natural

gas in interstate commerce are exempt from the requirements of section 7 of the Natural Gas Act. Requirements relating to certain arrangements for the transportation of natural gas, including transportation in emergency situations, are set forth in Part 284 of this chapter and apply to transportation for intrastate pipelines and certain local distribution companies including persons exempt from Natural Gas Act jurisdiction under section 1(c). Requirements relating to certain arrangements for the transportation of emergency natural gas by an interstate pipeline on behalf of another interstate pipeline and certain direct assignees of emergency natural gas are set forth in this subpart. This subpart also applies to certain arrangements for exchange of natural gas for emergency purposes.

(b) Exclusion. This subpart does not apply to existing emergency transactions.

§ 157.46 Definitions.

For purposes of this subpart:

(a) "Emergency" means:

(1) a situation where the gas supply either available or expected to be available would require the interstate pipeline company, distribution company, or person described in section 1(c) of the Natural Gas Act to impose curtailment on its system (including a situation where additional supplies

are necessary to maintain deliverability from storage or to replenish storage volumes in order to avoid or alleviate curtailment on its system);

(2) a sudden unanticipated (i) loss of natural gas supply or (ii) increase in demand; or

(3) a situation in which the qualified purchaser, in good faith, determines that immediate action is required or is reasonably anticipated to be required for protection of life or health or for maintenance of physical property.

(b) "Qualified seller" means any intrastate pipeline, interstate pipeline, distribution company or person described in section 1(c) of the Natural Gas Act.

(c) "Qualified purchaser" means a distribution company, interstate pipeline or person described in section 1(c) of the Natural Gas Act.

(d) "Interstate pipeline" means any natural gas company as defined in section 2(6) of the Natural Gas Act which is engaged in the transportation by pipeline of natural gas.

(e) "Distribution company" means any person (or governmental entity) who receives natural gas for local distribution and resale to natural gas users.

(f) "Intrastate pipeline" means any person (other than an interstate pipeline or distribution company)

engaged in the transportation by pipeline of natural gas.

(g) "Emergency natural gas" means natural gas sold or transported to alleviate an emergency in accordance with this subpart.

(h) "Sale of emergency natural gas" includes an exchange of natural gas to alleviate an emergency in accordance with this subpart between a qualified seller and qualified purchaser, provided that the volumes exchanged are paid back within 180 days after the termination of deliveries of emergency natural gas.

(i) "Existing emergency transactions" means a transaction under §§ 2.68, 157.22, or 157.29 pursuant to a contract executed:

(1) before November 9, 1978, in the case of a sale which is a first sale within the meaning of the Natural Gas Policy Act of 1978; or

(2) before December 1, 1978, in any other case.

§ 157.47 Exemptions from certificate requirements.

(a) Sales, construction and operation of facilities. Any qualified seller who sells emergency natural gas to a qualified purchaser, and any person who constructs or

operates facilities for the sale or transportation of emergency natural gas, is exempt from the requirements of section 7 of the Natural Gas Act, to the extent that:

(1) the sale of emergency natural gas or the construction or operation of facilities is necessary to alleviate an emergency; and

(2) the sale, construction or operation is conducted in accordance with the provisions of this subpart.

(b) Transportation. Any interstate pipeline transporting emergency natural gas on behalf of (1) any direct assignee described in § 157.48(d), or (2) another interstate pipeline, may engage in such transportation in accordance with this subpart without necessity of obtaining any other authorization for such transportation under section 7 of the Natural Gas Act.

(c) Jurisdiction of the Commission under the Natural Gas Act. Participation in any transaction in accordance with this subpart shall not subject any person to the jurisdiction of the Commission under the Natural Gas Act except to the extent provided in this subpart.

§ 157.48 Terms and conditions of emergency transactions.

(a) General conditions. (1) Qualified purchasers may purchase emergency natural gas in accordance with the provisions of this subpart but should make every reasonable attempt to conduct their operations in such a manner as to minimize or, if possible, to avoid continuing reliance upon emergency natural gas supplies.

(2) In applying the definition of emergency, flexibility will be accorded interstate pipelines and distribution companies to account for colder than normal winter weather. A reasonable relationship should exist between volumes purchased under this subpart and the volumes which are anticipated to be needed during the emergency.

(3) When a distribution company purchases, or a direct sale customer or distribution company requests assignment of emergency natural gas, a responsible official of the distribution company or direct sale customer shall advise the interstate pipeline which will make the deliveries, before commencement of the deliveries, that the emergency exists or is imminent and shall provide the interstate pipeline with such information as may be required within sufficient time to enable the interstate pipeline to make the reports required in § 157.51 of this subpart.

(b) Duration. (1) An emergency transaction under this subpart shall be limited to a period of not more than 60 consecutive calendar days, except that such transaction may be continued for an additional period of not more than 60 consecutive days where:

(i) fifteen days prior to the end of the initial 60-day period, the qualified purchaser files a petition requesting a waiver so as to permit one additional 60-day period of exemptions describing fully the continued emergency; and

(ii) the Commission does not, within the 15-day period, by order, prohibit continuation of the emergency transaction for such additional period.

(2) Transactions necessary for the pay back of volumes of natural gas exchanged for emergency natural gas, may occur within the 180-day period which follows the termination of deliveries of the emergency natural gas for which the pay back volumes are exchanged.

(c) Cost of facilities. No cost associated with facilities installed by interstate pipelines in connection with emergency transactions shall be included in the interstate pipeline's jurisdictional rates unless certificate authorization under section 7 of the Natural Gas Act exists or is obtained for such facilities.

(d) System supply and direct assignment of supplies. (1) Interstate pipelines may purchase emergency natural gas for general system supply for an emergency.

(2)(i) Interstate pipelines may purchase emergency natural gas and directly assign volumes and costs associated with such gas, including transportation costs, to its direct sale and distribution company customers, or persons described in section 1(c) of the Natural Gas Act, faced with an emergency, if such customers or persons comply with paragraph (a)(3) of this section.

(ii) An interstate pipeline, at its discretion, may choose to establish a separate account to cover the cost of all assigned emergency purchases and allocate costs in that account to the individual assignment customers or person described in section 1(c) of the Natural Gas Act on a weighted average cost basis. If an interstate pipeline purchases emergency gas supplies for direct assignment in quantities greater than related emergency requirements, then the balance may be used for general system supply. It is expected that such excess emergency natural gas volumes will be small and that pipelines will make every reasonable attempt to balance assignments with supplies. Interstate pipelines may also act as brokers or agents

(without compensation for acting as broker or agent) in acquiring and transporting emergency natural gas for distribution company customers, or persons described in section 1(c) of the Natural Gas Act, faced with an emergency and shall cooperate with these customers, or persons in arranging for such acquisition and transportation.

(iii) In the case of any direct assignment of emergency natural gas or brokered or agency transaction, the customer or person for whom the natural gas is acquired and transported shall be responsible for providing volumes for compressor station fuel and lost and unaccounted for volumes of natural gas.

§ 157.49 Rates for emergency transactions.

(a) Rates and charges. (1) Rates for transportation by an interstate pipeline under this subpart shall be computed in accordance with subparagraph (2) of this paragraph. Sales by interstate pipelines shall be made at rates prescribed in their tariffs, except that if the natural gas is purchased for assignment to particular direct customers, distribution companies, or persons described in section 1(c) of the Natural

Gas Act, the natural gas will be priced to recover the cost of purchased gas plus an amount for transportation as provided in subparagraph (2) of this paragraph.

(2)(i) If an interstate pipeline has on file with the Commission a transportation rate schedule applicable to transportation arrangements under Subpart A of Part 284, the interstate pipeline shall use the rates contained in that schedule.

(ii) if an interstate pipeline does not have on file with the Commission a transportation rate schedule applicable to transportation arrangements under Subpart A of Part 284, the interstate pipeline may elect either:

(A) to base its rates upon the methodology and cost used in designing rates to recover the transmission and related storage costs included in its then effective sales rate schedules; or

(B) to use the rates contained in a transportation rate schedule on file with the Commission which the interstate pipeline determines covers service comparable to transportation service under Subpart A of Part 284.

(b) Presumption of prudence. The Commission will examine the prudence of emergency purchases by interstate pipelines, except that a rebuttable presumption of prudence

shall be accorded to the extent that the rates paid do not exceed the maximum lawful price specified in § 271.202 of this chapter.

§ 157.50 Treatment of revenues.

(a) General. Except as provided in paragraphs (b) (c),(d), and (e), an interstate pipeline shall credit to Account No. 191 all revenues, received from emergency transactions in excess of the sum of (1) the cost of purchased gas, plus (2) one cent per Mcf, for any such volumes of natural gas transported, sold or assigned.

(b) Direct assignments. An interstate pipeline purchasing emergency natural gas for direct assignment will not be required to credit to Account No. 191 revenues pursuant to paragraph (a) to the extent the pipeline can show that:

(1) its currently effective rates are based upon billing determinants which include a representative level of sales associated with assigned volumes; or

(2) its currently effective rates reflect a representative level of revenues associated with sales of assigned volumes which have been credited to the cost of service.

(c) Transportation. An interstate pipeline providing transportation of emergency natural gas will not be required to credit revenues to Account No. 191 pursuant to paragraph (a):

(1) to the extent revenues attributable to such services fall within representative levels which have been credited in arriving at a test period cost of service; or

(2) to the extent that volumes transported fall within representative levels which have been included in billing determinants for the purpose of establishing rates.

(d) An interstate pipeline selling emergency natural gas will not be required to credit revenues to Account No. 191 pursuant to paragraph (a) to the extent the pipeline can show that:

(1) its currently effective sales rates are based upon billing determinants which include a representative level of sales associated with emergency natural gas volumes; or

(2) its currently effective sales rates reflect a representative level of revenues associated with sales of emergency natural gas volumes which have been credited to the cost of service.

(e) Actual expenses. An interstate pipeline will not be required to credit to Account No. 191 any amount in excess of one cent per Mcf if the pipeline demonstrates upon application to the Commission that the amount is necessary to compensate for actual out-of-pocket expenses incurred by reason of engaging in the emergency transaction.

§ 157.51 Reporting requirements for emergency transactions.

(a) Initial reports. Within 48 hours after commencement of deliveries of emergency natural gas, the interstate pipeline shall notify the Commission in writing of the sale, stating the specific nature and duration of the emergency; the amount of emergency natural gas to be purchased or transported on a daily basis; the name of the seller, transporter, and any person to whom the emergency natural gas is to be assigned; and the price.

(b) Quarterly reports. For any calendar quarter during which an interstate pipeline engages in any transaction for emergency natural gas, the interstate pipeline shall file with the Commission, within thirty days after the end of each calendar quarter occurring in 1979, whether the transactions are completed or in progress, a sworn statement and four conformed copies thereof, which shall include the following information:

(1) identification of each emergency transaction completed or in progress;

(2) the volumes of emergency natural gas delivered during the quarter under each transaction;

(3) the total revenue or other compensation received by each seller for each emergency transaction during the quarter;

(4) the total amount of revenue or other compensation received for each emergency transaction during the quarter;

(5) the charges and the methods by which the pipeline determined compensation for the transportation of assigned emergency gas;

(6) information relied on to determine eligibility for each transaction;

(7) the volumes of emergency natural gas included in system supply;

(8) a statement from a responsible company official attesting that the activities of the interstate pipeline were carried out in accordance with the requirements of this subpart and to the best of his or her knowledge, an emergency did exist or was reasonably anticipated, and a sworn statement from a responsible company official of each purchasing distribution company or each direct sale customer or distribution company which requested the assignment of emergency supplies describing the emergency circumstances as required by § 157.48(a)(3).

§ 157.52 Waiver of requirements for emergency transactions.

The Commission may by order waive the requirements of this subpart in connection with any emergency transaction to the extent required by the public interest.

SUBPART D - EXEMPTION OF NATURAL GAS SERVICE FOR DRILLING, TESTING, OR PURGING FROM CERTIFICATE REQUIREMENTS

§ 157.53 Drilling of gas or oil wells and testing or purging of new natural gas pipeline facilities.

(a) Construction and operation of facilities necessary to render direct natural gas service for use in the drilling of gas or oil wells or for the use in the testing and purging of new natural gas pipeline facilities are exempted from the certificate requirements of section 7(c) of the Natural Gas Act, when the construction and operation of such facilities are conducted in accordance with paragraph (b) of this section.

(b) Operations undertaken to render direct natural gas service shall be terminated upon the completion of the well or the purging or testing of the pipeline facilities. Persons undertaking any construction or operation of facilities or service under this section shall file an original and two copies of an annual statement, by February 1 of each year, describing their activities hereunder.

5. Chapter I of Title 18 is amended by adding new Subchapters H and I to read as follows:

SUBCHAPTER H - REGULATION OF NATURAL GAS SALES UNDER THE NATURAL GAS POLICY ACT OF 1978

Part
270 Rules generally applicable to regulated sales of natural gas.
271 Ceiling prices.
272 [Reserved]
273 Collection authority; refunds.
274 Determinations by jurisdictional agencies.
275 Commission determinations and review of jurisdictional agency determinations.
276 Reports.

PART 270 - RULES GENERALLY APPLICABLE TO REGULATED SALES OF NATURAL GAS

Subpart A - General Rules and Definitions

Sec.
270.101 Application of ceiling prices to first sales of natural gas.
270.102 Definitions.
270.103 Effective date.

Subpart B - Special Rules

Sec.
270.201 First sale of natural gas subject to differing maximum lawful prices.
270.202 Resales.
270.203 Pipeline or distributor production.
270.204 Btu content per unit volume of natural gas.
270.205 Indefinite price escalator clauses.

Authority: This part is issued under the Natural Gas Policy Act of 1978, P.L. 95-621, 92 Stat. 3350.

SUBPART A - GENERAL RULES AND DEFINITIONS

§ 270.101 Application of ceiling prices to first sales of natural gas.

(a) Maximum lawful price. It is unlawful for any person to sell natural gas at a first sale price in excess of the highest maximum lawful price applicable to such gas under Part 271.

(b) Effect of maximum lawful price on contract price. If the price established under a contract for the first sale of natural gas does not exceed the applicable maximum lawful price, then such maximum lawful price does not supersede or nullify the effectiveness of the price established under such contract.

(c) Maximum lawful prices requiring jurisdictional agency determinations. Except to the extent that a seller is authorized to make interim collection under Part 273, any price specified in any of the following subparts of Part 271 applies to a first sale of natural gas only if a determination by a jurisdictional agency that such gas qualifies under such subpart has become final in accordance with Parts 274 and 275:

(1) Subpart B (relating to new natural gas and certain OCS gas);

(2) Subpart C (relating to new, onshore production wells);

(3) Subpart G (relating to high-cost natural gas); and

(4) Subpart H (relating to stripper well natural gas).

(d) Other categories of natural gas. (1) Certain committed or dedicated natural gas. The maximum lawful prices under Subpart D of Part 271 (relating to certain committed or dedicated natural gas) apply to a first sale to the extent provided in such subpart, if the applicable filing requirements under §§ 154.92 and 154.94 of this chapter are met.

(2) Existing intrastate contracts; intrastate rollover contracts; certain other categories. The maximum lawful prices under Subparts E, F, and I of Part 271 (relating to existing intrastate contracts, intrastate rollover contracts, and certain other categories of natural gas) apply to first sales of natural gas without requirement of a prior determination by the Commission or a jurisdictional agency.

(e) Refund obligations. Any collection of a first sale price under this subchapter is subject to any refund obligation which may be applicable under Part 273 or under otherwise applicable law or regulation.

§ 270.102 Definitions.

(a) NGPA definitions. Terms defined in the NGPA shall have the same meaning for purposes of this subchapter as they have under the NGPA, unless further defined in this subchapter.

(b) Subchapter H definitions. For purposes of this subchapter:

(1) "NGPA" means the Natural Gas Policy Act of 1978.

(2) "British thermal unit" or "Btu" means the quantity of heat required to raise the temperature of one pound avoirdupois of pure water from 58.5 degrees to 59.5 degrees Fahrenheit, determined in accordance with § 270.204.

(3) "MMBtu" means million British thermal units.

(4)(i) Except as provided in clause (ii), "production in commercial quantities" means production of natural gas from a well or reservoir which is either: (A) sold and delivered to one other than the operator; or (B) (subject to § 271.204(e)) retained by the operator, or any owner of the production at severance, for beneficial economic use.

(ii) Natural gas used for the testing of natural gas wells or for other field uses which are production related shall not be considered produced in commercial quantities.

(iii) Any of the following information may be considered as evidence of sale and delivery, or production for the operator's or other owner's beneficial economic use:

(A) payment of severance taxes;

(B) payment of royalties;

(C) production reports filed with a jurisdictional agency;

(D) a sales contract together with verification by a purchaser that natural gas had been delivered and paid for under the contract; or

(E) any other substantial evidence that production has been sold and delivered, or retained for the beneficial use of the operator or other owner of production at severance.

(5) "Crude oil" means a mixture of hydrocarbons that exists in the liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities.

(6) "Surface location" means the point on the earth's surface from which drilling of a well is commenced, except that in the case of a well drilled in permanent surface waters, surface location means the point of penetration of the earth's surface immediately below the water's surface, beneath a floating or fixed drilling structure.

(7) "OCS" means the Outer Continental Shelf as defined in section 2(35) of the NGPA.

(8) "Existing intrastate contract" means any intrastate contract for the first sale of natural gas in existence on November 8, 1978. A contract is in existence on November 8, 1978 if on that date, there is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. For the purposes of this subchapter "existing intrastate contract" includes a "successor to an existing intrastate contract."

(9) "Successor to an existing intrastate contract" means any intrastate contract, other than an intrastate rollover contract, entered into on or after November 9, 1978, for the first sale of natural gas which was previously subject to an existing contract, whether or not there is an identity of parties or terms with those of such existing contract. The term "successor to an existing intrastate contract" includes a contract the primary term of which has not expired but which has been assigned to a different party in interest.

(10) "Intrastate contract" means any contract applicable to the sale of natural gas which was not committed or dedicated to interstate commerce on November 8, 1978.

(11) "Intrastate rollover contract" means any contract, entered into on or after November 9, 1978, for the first sale of natural gas that was previously subject to an existing intrastate contract which expired at the end of a fixed term (not including any extension thereof taking effect on or after November 9, 1978), specified by the provisions of such existing contract, as such contract was in effect on November 9, 1978, whether or not there is an identity of parties or terms with those of such existing contract.

(12) "Jurisdictional agency" means the state or federal agency identified in Subpart E of Part 274.

§ 270.103 Effective date.

The provisions of this subchapter apply to deliveries of natural gas on or after December 1, 1978.

SUBPART B - SPECIAL RULES

§ 270.201 First sale of natural gas subject to differing maximum lawful prices.

In the case of a first sale of any quantity of natural gas (a) which is sold at a single price, and (b) which is comprised of various volumes of natural gas to which different maximum lawful prices are applicable, the maximum lawful price for such sale shall be the average of such maximum lawful prices (weighted according to the respective volumes of gas subject to different maximum lawful prices).

§ 270.202 Resales.

(a) General rule. In the case of any first sale of natural gas which is a resale of such gas, the maximum lawful price shall be the higher of:

(1) the maximum lawful price which would be applicable to such sale if it were not a resale; or

(2) whichever of the following is applicable:

(i) in the case of natural gas which when sold to the reseller was subject to a single maximum lawful price, the maximum lawful price applicable to the natural gas sold to the reseller; or

(ii) in the case of natural gas which when sold to the reseller was subject to more than one maximum lawful price,

the average of the maximum lawful prices applicable to the natural gas sold to the reseller (weighted according to the volumes of the purchased natural gas that are subject to the different maximum lawful prices).

(b) Special rule for interim collections.

(1) If the price charged and collected for a sale to a reseller is charged and collected under the authority of Part 273 (relating to interim collection), then:

(i) the price authorized to be collected by Part 273 shall be treated as a maximum lawful price for purposes of paragraph (a)(2); and

(ii) the price charged and collected by the reseller shall be subject to the same refund conditions as are imposed on the person who sold the natural gas to the reseller under Part 273.

(2) The reseller is not obligated by Part 273 to make any filings with the Commission if the person who sold the natural gas to the reseller has made the filings required by Part 273.

(c) Allowances. A resale of natural gas shall not be considered to exceed any maximum lawful price established in paragraph (a) of this section if it exceeds such price to the extent necessary to recover state severance taxes or production-related costs which are borne by the reseller and

recovery of which is authorized under Subpart K of Part 271. If a price for a first sale to a reseller of natural gas is not considered to exceed the applicable maximum lawful price applicable to such sale by reason of an amount allowed under Subpart K, then for purposes of applying paragraph (a)(2), the maximum lawful price applicable to the sale to the reseller shall be considered to include the amount so allowed.

(d) Adjustments. Pursuant to section 502(c) of the NGPA, a reseller may apply to the Commission for an adjustment of the maximum lawful price in paragraph (a) of this section on the grounds that such price results in special hardship, inequity or an unfair distribution of burdens.

(e) Definition. For purposes of this section:

(1) "Resale" of natural gas means the sale of natural gas, all or a portion of which was both purchased and resold in transactions which are first sales as defined in the NGPA.

(2) A "reseller" means the seller in a resale of such natural gas.

(f) Record retention. In addition to any records required to be retained by reason of an election made under § 276.101(b), resellers shall maintain such records as are sufficient to demonstrate that prices charged in connection

with resales of natural gas do not exceed the maximum lawful prices prescribed in this section. Such records shall include:

(1) a record of each resale of natural gas by the reseller, including the identity of the purchaser and the volume and price of such sale;

(2) a record of each sale of natural gas to the reseller including the volume and price of such sale;

(3) a copy of each contract covering the purchase and sale of natural gas resold; and

(4) a record of the method by which the reseller computes the maximum lawful price applicable to each resale and the documents relied on to make the computations.

(g) Period for keeping records. Each reseller required to maintain records under this section shall maintain and preserve contracts for at least three years after expiration and such other records for at least three years after the date of the relevant transaction or event.

§ 270.203 Pipeline or distributor production.

(a) Attribution rule. For purposes of applying section 2(21)(B) of the NGPA, a sale by a pipeline or

distributor is a sale of natural gas attributable to volumes of natural gas produced by such pipeline or distributor (or affiliate thereof) to the extent such sale is a sale comprised of production volumes from identifiable wells, properties, or reservoirs which are owned by such pipeline or distributor (or affiliate thereof).

(b) Circumvention rule. To the extent a sale of natural gas by a pipeline or distributor is comprised of production volumes from identifiable wells, properties, or reservoirs and a portion of those volumes is produced from wells, properties, or reservoirs owned by such pipeline or distributor (or affiliate thereof), then such sale shall be treated as a first sale pursuant to the Commission's authority under section 2(21)(A)(v) of the NGPA unless:

(1) the price at which such natural gas is sold is regulated pursuant to the Natural Gas Act or is regulated or subject to regulation by a state agency; or

(2) the Commission, on application, has determined not to treat such sale as a first sale.

(c) Definitions. For purposes of this section:

(1) "Pipeline or distributor" means an interstate pipeline, an intrastate pipeline, a local distribution company, or an affiliate of any of the above.

(2) "State agency" means a state, a political subdivision of a state, or an agency or instrumentality of either.

§ 270.204 Btu content per unit volume of natural gas.

For purposes of determining the number of Btu's per unit volume of natural gas, the Btu content of one cubic foot of natural gas is the number of Btu's produced by the combustion, at constant pressure, of the amount of gas which would occupy a volume of 1.0 cubic foot at a temperature of 60 degrees Fahrenheit, saturated with water vapor and under a pressure equivalent to that of 30.00 inches of mercury at 32 degrees Fahrenheit, and under standard gravitational force (980.665 centimeters per second squared) with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of the gas and air and when the water formed by combustion is condensed to the liquid state.

§ 270.205 Indefinite price escalator clauses.

(a) The establishment of maximum lawful prices under the NGPA shall not trigger indefinite price escalator clauses in existing intrastate or interstate contracts.

(b) For purposes of this section, the term

"indefinite price escalator clause" shall have the same meaning as provided in section 105(b)(3)(B) of the NGPA.

PART 271 - CEILING PRICES

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Authority: This part is issued under the Natural Gas Policy Act of 1978, P.L. 95-621, 92 Stat. 3350.

SUBPART A - SUMMARY TABLES AND CALCULATIONS

§ 271.101 Ceiling prices for certain categories of natural gas.

(a) Subparts B through J of this part specify maximum lawful prices applicable to first sales of natural gas. Maximum lawful prices for Subparts B, C, G, H, and I, and for certain categories of natural gas under Subpart D, are determined in accordance with price tables which appear in those subparts and which are summarized in the following tables:

Table I - Summary of certain gas ceiling prices

(Prices in $/MMBtu)

Subpart A of Part 271	NGPA Section	Category of Gas	Maximum Lawful Price for Deliveries made in: December 1978	January 1979
B	102	New Natural Gas, Certain OCS Gas	$2.078	$2.096
C	103	New Onshore Production Wells	1.969	1.980
G	107	High Cost (below 15,000 only)	2.078	2.096
H	108	Stripper	2.224	2.243
I	109	Not Otherwise Covered	1.630	1.639

Table II - Certain gas committed or dedicated to interstate commerce on November 8, 1978.

Subpart of Part 271	NGPA Section	Category of Natural Gas	Type of Sale or Contract	Maximum lawful Price per MMBtu for Deliveries Made in: December 1978	January 1979
D	104	Post-1974 gas	All producers	$1.630	$1.639
		1973-1974 biennium gas	Small producer	1.379	1.387
			Large producer	1.058	1.064
	106(a)	Interstate Rollover gas	Small producer	0.702	0.715
			Large producer	0.603	0.607
	104	Replacement contract gas or recompletion gas	Small producer	0.771	0.775
			Large producer	0.593	0.596
		Flowing gas	Small producer	0.393	0.395
			Large producer	0.332	0.334
		Certain Permian Basin gas	Small producer	0.462	0.465
			Large producer	0.405	0.407
		Certain Rocky Mountain gas	Small producer	0.462	0.465
			Large producer	0.393	0.395
		Certain Appalachian Basin gas	North subarea contracts dated after 10-7-69	0.368	0.370
			Other contracts	0.344	0.346
		Minimum rate gas	All producers	0.203	0.204

(b) Caveat. The tables in paragraph (a) of this section are summaries of applicable maximum lawful prices and may not be relied upon to establish qualification for a particular price. The seller should examine the other provisions of this subchapter in order to ascertain whether the natural gas in question qualifies for the price appearing in the table or some other price.

(c) Cross reference. For maximum lawful prices applicable to natural gas sold under existing intrastate contracts or intrastate rollover contracts, see Part 271, Subparts D and F.

§ 271.102 Calculation of inflation adjustment for certain maximum lawful prices.

(a) Maximum lawful prices for first sales of certain categories of natural gas to which Subparts D, E, and F apply are to be calculated in the following manner:

(1) Determine the base price applicable for the base month.

(2) For the month following the base month, multiply the inflation adjustment applicable for such following month by the base price.

(3) For each succeeding month (through the month of delivery), multiply the inflation adjustment applicable for

such succeeding month by the price calculated under this paragraph for the prior month.

(b) The price determined for each month under paragraph (a) shall be rounded to the nearest mill (rounding to the next highest mill only that fraction which is one-half a mill or greater).

(c) Inflation adjustment. The following table contains the inflation adjustment applicable for each month beginning with May 1977, and ending with January 1979:

Table III - Inflation adjustment.

Month of Delivery	Factor by which price in preceding month is multiplied
1977	
May	1.00636
June	1.00636
July	1.00431
August	1.00431
September	1.00431
October	1.00463
November	1.00463
December	1.00463
1978	
January	1.00597
February	1.00597
March	1.00597
April	1.00889
May	1.00889
June	1.00889
July	1.00581
August	1.00581
September	1.00581
October	1.00581
November	1.00581
December	1.00581
1979	
January	1.00581

(d) Definitions. For purposes of this section:

(1) "base price" means:

(i) for maximum lawful prices to be calculated under § 271.402(d)(1) (relating to certain committed or dedicated gas), the just and reasonable rate for April 20, 1977;

(ii) for maximum lawful prices to be calculated under § 271.502(b)(2) (relating to certain existing intrastate contracts), the contract price per MMBtu on November 9, 1978; and

(iii) for maximum lawful prices to be calculated under § 271.602(a)(1) (relating to certain rollover contracts), the contract price per MMBtu under the expired contract for the month in which the effective date of the rollover contract occurs.

(2) "base month" means:

(i) April 1977, for maximum lawful prices under § 271.402(c)(1);

(ii) November 1978, for maximum lawful prices under § 271.502(b)(2); and

(iii) the month in which the effective date of the rollover contract occurs, for maximum lawful prices under § 271.602(a)(1).

SUBPART B - NEW NATURAL GAS AND CERTAIN NATURAL GAS PRODUCED FROM THE OUTER CONTINENTAL SHELF

§ 271.201 Applicability.

This subpart implements section 102 of the NGPA and applies to the first sale of:

(a) new natural gas; or

(b) natural gas produced from a new OCS reservoir on an old OCS lease.

§ 271.202 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurs in the calendar month of:	The maximum lawful price is:
December 1978	$ 2.078
January 1979	$ 2.096

§ 271.203 Definitions.

For purposes of this subpart:

(a) "New natural gas" means natural gas which a jurisdictional agency has determined, in accordance with Parts 274 and 275, to be new natural gas (as defined in section 102(c) of the NGPA).

(b) "Natural gas from a new OCS reservoir on an old OCS lease" means natural gas which the jurisdictional agency determines, in accordance with Parts 274 and 275 and under section 102(d)(2), (3), (4), and (5) of the NGPA, to be natural gas produced from a reservoir which is on an old lease on the OCS and which was not discovered before July 27, 1976.

(c) "OCS lease" means a lease of submerged acreage which is entered into with the Secretary of the Interior under the Outer Continental Shelf Lands Act, as amended, (43 U.S.C. 1331, et seq.).

(d) "New OCS lease" means an OCS lease entered into by the Secretary of the Interior on or after April 20, 1977.

(e) "Old OCS lease" means an OCS lease other than a new OCS lease.

§ 271.204 Special rules.

(a) Vertical measurement of 1,000 feet between completion locations. For the purpose of determining under section 102(c)(1)(B)(ii) of the NGPA the vertical distance between the deepest marker well completion location and a new well completion location, for which a determination is sought, measurement shall be the true vertical depth from the highest perforation point of such marker well completion location to the highest perforation point in the new well completion location. In the case of any well which is an open-hole completion, measurement shall be from the highest elevation point within the well bore of the reservoir being produced.

(b) Capable of producing in paying quantities. For purposes of section 102(d)(2)(B)(i) and (ii) of the NGPA, a reservoir is capable of producing in paying quantities if a well completed therein can reasonably be expected to produce natural gas in quantities sufficient to yield revenues in excess of operating costs.

(c) Commercially producible. For purposes of section 102(d)(2)(B)(iii) of the NGPA, a reservoir is commercially producible if a well completed therein can reasonably be expected to produce natural gas in commercial quantities as defined in § 270.102(b)(4).

(d) Suitable facilities. For purposes of section 102(c)(1)(C)(iii)(II) of the NGPA (but subject to section 102(c)(1)(C)(iv) thereof), suitable facilities for the production and delivery of natural gas described in section 102(c)(1)(C)(iii)(I) of the NGPA were in existence on April 20, 1977, if on that date facilities for the production and delivery of natural gas to a pipeline were:

(1) installed; or

(2) substantially installed and additional facilities necessary for such production and delivery were readily available and could have been installed by April 20, 1977.

(e) Production in commercial quantities. For purposes of determining whether production of natural gas in commercial quantities has occurred under section 102(c)(1)(C) of the NGPA:

(1) a rebuttable presumption exists that production from a reservoir in commercial quantities has not occurred if natural gas has not been sold and delivered from such reservoir before April 20, 1977. Such presumption may be rebutted by evidence of retention of the natural gas by the operator, or owner of the production at severance, for beneficial economic use; and

(2) quantities of natural gas sold in interstate commerce (within the meaning of the Natural Gas Act) before November 9, 1978, shall not be taken into account if such sales were made:

(i) under section 6 of the Emergency Natural Gas Act of 1977; or

(ii) under the emergency sale authority pursuant to Opinion 699-B, issued by the Commission under section 7(c) of the Natural Gas Act.

SUBPART C - NEW, ONSHORE PRODUCTION WELLS

§ 271.301 Applicability.

This subpart implements section 103 of the NGPA and applies to the first sale of natural gas produced from a new, onshore production well.

§ 271.302 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurs in the calendar month of:	The maximum lawful price is:
December 1978	$ 1.969
January 1979	$ 1.980

§ 271.303 Definition of new, onshore production well.

For purposes of this subpart, the term "new, onshore production well" means a well which a jurisdictional agency has determined, in accordance with Parts 274 and 275, to be a new, onshore production well (as defined in section 103(c) of the NGPA).

§ 271.304 Waivers of well-spacing requirements.

If a jurisdictional agency alters, or grants a waiver of, any applicable well-spacing requirements prior to the commencement of surface drilling of the well for which a determination is sought, the new well shall be deemed to satisfy any applicable Federal or State well-spacing requirements as required by section 103(c)(2) of the NGPA.

§ 271.305 Special rule applicable to existing proration units.

(a) Applicability. This section applies to a jurisdictional agency determination with respect to a new well which is drilled:

(1) within a proration unit in existence at the time the surface drilling of such new well began; and

(2)(i) to a reservoir to which the proration unit applies and from which natural gas either was or is being produced in commercial quantities through an existing well or (ii) to a reservoir to which the proration unit applies and from which natural gas was capable of being produced in commercial quantities through a well, the surface drilling of which commenced prior to February 19, 1977.

(b) Wells spudded after December 31, 1978, and for which a drilling permit had not been issued prior to January 1, 1979. (1) This paragraph applies to wells to which this section applies and:

(i) for which a drilling permit is issued after December 31, 1978; or

(ii)(A) the surface drilling of which began after December 31, 1978; and

(B) for which a drilling permit had not been issued prior to January 1, 1979.

(2) In order for natural gas from a well to which this paragraph applies to qualify for the maximum lawful price under this subpart, the jurisdictional agency must find, prior to the commencement of drilling, that the well is necessary to effectively and efficiently drain a portion of the reservoir covered by the proration unit which cannot be effectively and efficiently drained by any existing well within the proration unit. Such finding must be explicit and must involve either a redefinition of the boundaries of the previously existing proration unit or an alteration of or exception to otherwise applicable well-spacing rules.

(c) Wells spudded after February 19, 1977, and before January 1, 1979, or for which a drilling permit was issued before January 1, 1979. (1) This paragraph applies to wells to which this section applies and:

(i) the surface drilling of which began on or after February 19, 1977, and before January 1, 1979; or

(ii) for which a drilling permit was issued before January 1, 1979.

(2) Upon request of an applicant for a determination for a well to which this paragraph applies, the jurisdictional agency shall review the record which was developed prior to the commencement of drilling of (in the case of a well described in subparagraph (1)(i) of this paragraph) or the issuance of the drilling permit for (in the case of a well described in subparagraph (1)(ii) of this paragraph) the well for which the determination is sought. In order for natural gas from such well to qualify for the maximum lawful price under this subpart, the jurisdictional agency must make a finding based on such review that prior to the commencement of drilling or the issuance of the drilling permit:

(i) the agency explicitly found that the drilling of the new well was necessary to effectively and efficiently drain a portion of the reservoir covered by the proration unit which could not be effectively and efficiently drained by any existing well within the proration unit; or

(ii) the agency implicitly made such finding and the record developed by such agency before commencement of drilling would support an explicit finding that the drilling of the new well was necessary to effectively and efficiently drain a portion of the reservoir covered by the proration unit which could not be effectively and efficiently drained by any existing well within the proration unit.

(d) Notice of findings.. If the jurisdictional agency makes a finding under paragraph (b) or (c) of this section, it shall notify the Commission of such a determination in accordance with § 274.104.

SUBPART D - NATURAL GAS COMMITTED OR DEDICATED TO INTERSTATE COMMERCE

§ 271.401 Applicability.

This subpart implements sections 104 and 106(a) of the NGPA and applies to the first sale of natural gas committed or dedicated to interstate commerce on November 8, 1978, and for which a just and reasonable rate under the Natural Gas Act was in effect on November 8, 1978, for the sale of such gas.

§ 271.402 Maximum lawful prices.

(a) Ceiling prices. Unless a different rate is applicable under paragraph (d), the maximum lawful price for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

NGPA Section	Category of Natural Gas	Type of Sale or Contract	Maximum Lawful Price per MMBtu for Deliveries made in: December 1978	January 1979
104	Post-1974 gas	All producers	$1.630	$1.639
104	1973-1974 biennium gas	Small producer	1.379	1.387
		Large producer	1.058	1.064
106(a)	Interstate rollover gas	Small producer	0.702	0.715
		Large producer	0.603	0.607
104	Replacement contract gas or recompletion gas	Small producer	0.771	0.775
		Large producer	0.593	0.596
	Flowing gas	Small producer	0.393	0.395
		Large producer	0.332	0.334
	Certain Permian Basin gas	Small producer	0.462	0.465
		Large producer	0.405	0.407
	Certain Rocky Mountain gas	Small producer	0.462	0.465
		Large producer	0.393	0.395
	Certain Appalachian Basin gas	North subarea contracts dated after 10-7-69	0.368	0.370
		Other contracts	0.344	0.346
	Minimum rate gas	All producers	0.203	0.204

(b) Definitions. For the purposes of this section:

(1) "Post-1974 gas" means natural gas to which this subpart applies which is produced from a well the surface drilling of which commenced on or after January 1, 1975.

(2) "1973-1974 biennium gas" means natural gas, to which this subpart applies, from a well the surface drilling of which commenced on or after January 1, 1973, and prior to January 1, 1975.

(3) "Interstate rollover gas" means:

(i) natural gas to which this subpart applies which is sold under a rollover contract as defined in section 2(12) of the NGPA; or

(ii) natural gas to which this subpart applies which is sold under a contract which would have been a rollover contract, but for the fact that the expiration of the previous contract occurred prior to November 9, 1978.

(4) "Replacement contract gas or recompletion gas" means natural gas to which this subpart applies which is:

(i) sold under a replacement contract which was executed on or after January 1, 1973, but prior to November 9, 1978, where the prior contract expired by its own terms prior to January 1, 1973; or

(ii) sold under a replacement contract executed prior to November 9, 1978, where the prior contract expired by its own terms after January 1, 1973; or

(iii) sold under a contract for the sale of natural gas from a well commenced prior to January 1, 1973, and

not sold in interstate commerce prior to January 1, 1973, (excluding gas sold prior to such date under §§ 2.68, 2.70, 157.22 or 157.29 of this chapter); or

(iv) produced as a result of a completion operation into a different formerly nonproductive reservoir, commenced on or after January 1, 1973, and produced through a well commenced prior to January 1, 1973.

(5) "Certain Permian Basin gas" means natural gas (other than replacement contract gas or recompletion gas) to which this subpart applies and which is produced in the Permian Basin Area, as defined in FPC Opinion No. 662 (50 F.P.C. 390 at 400-401) and is sold pursuant to a contract executed on or after October 1, 1968.

(6) "Certain Rocky Mountain gas" means natural gas (other than replacement contract gas or recompletion gas) to which this subpart applies and which is produced in the Rocky Mountain Area, as defined in § 154.109(b) of this chapter and sold pursuant to a contract executed on or after October 1, 1968.

(7) "Certain Appalachian Basin gas" means natural gas (other than replacement contract gas or recompletion gas) to which this subpart applies and which is produced by a large producer either (i) in the south subarea under

contracts dated after October 7, 1969, or (ii) in the north subarea, of the Appalachian Basin Area, as defined in § 154.107 of this chapter.

(8) "Flowing gas" means natural gas to which this subpart applies (other than natural gas described in the preceding subparagraphs of this paragraph) produced from a well the surface drilling of which commenced prior to January 1, 1973.

(9) "Minimum rate gas" means natural gas to which this subpart applies produced from a well the surface drilling of which commenced prior to January 1, 1973, and which is sold pursuant to a contract providing for a fixed rate lower than that applicable to such gas under paragraph (a).

(10) A sale qualifies as a small producer sale under this subpart: (i) if it is a small producer sale (as defined in § 157.40(a)) covered by a blanket certificate under § 157.40(b) and (d), or (ii) if it is a sale by a large producer from small producer reserves, and such sale is entitled to the small producer rate under § 157.40(f)(2).

(11) A large producer sale is a first sale which does not qualify as a small producer sale under subparagraph (10) of this paragraph.

(c) Applicable higher rates.

(1) If a just and reasonable rate in effect on April 20, 1977, under §§2.56a(g), 2.56(h), 2.76, or 2.77 of this chapter was applicable on November 30, 1978, to a first sale of natural gas, then such rate (plus an inflation adjustment from April, 1977, determined in accordance with § 271.102), if higher, shall apply in lieu of the rate determined under paragraph (a).

(2) Any just and reasonable rate for a sale of natural gas which was established by the Commission after April 20, 1977, and before November 9, 1978, shall be the maximum lawful price applicable to such sale if higher than the otherwise applicable rate prescribed under paragraph (a) or (d)(1) of this section.

(3) Any seller seeking to charge a rate in excess of the applicable maximum lawful price described in paragraph (a), or (d)(1), or (d)(2) of this section must first file a petition seeking special relief pursuant to § 1.7(b) of this chapter fully justifying the relief sought. Such seller may not file a rate increase for, or charge or collect any rate in excess of the maximum lawful price otherwise applicable under this section unless the Commission has granted such petition for special relief.

§ 271.403 Special rule regarding carrying charge adjustment for advance payments.

The rate prescribed in § 271.402 for post-1974 gas to which Opinion No. 770-A applies shall be subject to a deduction of 83 cents per MMBtu as a carrying charge adjustment if the seller has accepted advance payments on or after 1:00 p.m., EST, November 5, 1976, under an advance payments contract with an interstate pipeline company and such pipeline company has received rate base treatment of such advance payments made. The resulting adjusted rate shall be employed in the discharge of the obligations of any advance payments after 1:00 p.m., EST, November 5, 1976, for all deliveries until an amount of natural gas has been delivered at the adjusted rate such that the total carrying charge credits equal the amounts lawfully collected by the jurisdictional pipeline company as a result of including the advance payments in rate base.

SUBPART E - SALES UNDER EXISTING INTRASTATE CONTRACTS

§ 271.501 Applicability.

This subpart implements section 105 of the NGPA and applies to the first sale of natural gas under an existing intrastate contract or under a successor to an existing intrastate contract. This subpart is not applicable to sales made under an intrastate rollover contract as defined in § 270.102(b)(11) of this part.

§ 271.502 Maximum lawful prices.

(a) November 9, 1978, contract price at or below $2.060 per MMBtu. In the case of a first sale of natural gas to which this subpart applies (other than a first sale to which paragraph (b) applies), the maximum lawful price for natural gas delivered in any month shall be the lower of:

(1) the price for such month under the terms of the existing intrastate contract to which such natural gas was subject on November 9, 1978, as such contract was in effect on November 9, 1978; or

(2) the maximum lawful price per MMBtu for such month under § 271.202 (relating to new natural gas).

(b) November 9, 1978, contract price greater than $2.060 per MMBtu. In the case of a first sale of natural gas to which this subpart applies, if the contract price applicable on November 9, 1978, was greater than $2.060 per MMBtu, the maximum lawful price for natural gas delivered in any month shall be the higher of:

(1) the maximum lawful price per MMBtu for such month under § 271.202 (relating to new natural gas); or

(2) the contract price per MMBtu on November 9, 1978, adjusted for inflation in accordance with § 271.102 of this part.

§ 271.503 Filing requirements.

Any person who collects a price under this subpart shall file reports required by § 276.101.

§ 271.504 Determination of contract price.

For purposes of this subpart:

(a) Contract price. "Contract price," when used with respect to any specific date and contract, means:

(1) the price paid per MMBtu under a contract for deliveries of natural gas occurring on that date; or

(2) if no deliveries of natural gas occurred under such contract on that date, the price per MMBtu that would have been paid had such deliveries occurred on that date.

(b) Take-or-pay clauses. If the contract contains a take-or-pay clause and payments were made under such clause for deliveries on November 9, 1978, the contract price on November 9, 1978, shall be determined as if volumes obligated to be taken were taken.

§ 271.505 Contract modifications.

(a) Except as provided in subparagraph (b), for purposes of this subpart, no successor to an existing intrastate contract or modification executed after November 9, 1978, of an existing intrastate contract may:

(i) alter the terms of the existing intrastate contract in a manner which has the effect of requiring the purchaser to bear any production-related costs (as defined in § 271.1101(b)) which were allocated to the seller under the existing intrastate contract; or

(ii) provide for an earlier date for deliveries than provided for under the existing contract.

(b) Nothing in paragraph (a) shall preclude a purchaser who was not a party to the existing intrastate

contract on November 9, 1978, from agreeing, by modifications of the existing intrastate contract, or otherwise, to bear responsibility and pay for any increase (or portion thereof) in production-related costs, incurrence of which is necessary in order for such person to take delivery of the natural gas subject to the existing intrastate contract.

SUBPART F - INTRASTATE ROLLOVER CONTRACTS

§ 271.601 Applicability.

This subpart implements section 106(b) of the NGPA and applies to the first sale of natural gas under an intrastate rollover contract.

§ 271.602 Maximum lawful price.

(a) The maximum lawful price for a first sale of natural gas under an intrastate rollover contract to which section 106(b)(1) of the NGPA applies shall be the higher of:

(1)(i) the maximum lawful price paid under the expired contract, per MMBtu, in the case of the month in which the effective date of such rollover contract occurs; and

(ii) in the case of any month thereafter, the maximum lawful price, per MMBtu, prescribed under this paragraph for the preceding month adjusted for inflation in accordance with § 271.102; or

(2) the amount determined under the following table:

If delivery occurs in the calendar month of:	The maximum lawful price is:
December 1978	$ 1.121
January 1979	$ 1.128

(b) The maximum lawful price, per MMBtu, for natural gas to which section 106(b)(2) of the NGPA (relating to certain State or Indian natural gas production interests) applies shall be the amount determined in accordance with the following table in lieu of the amount determined under the table under paragraph (a)(2):

If delivery occurs in the calendar month of:	The maximum lawful price is:
December 1978	$ 2.078
January 1979	$ 2.096

§ 271.603 Filing requirements.

Any person who collects a price under this subpart shall file reports required by § 276.101.

§ 271.604 Special rule.

(a) No intrastate rollover contract may contain terms which differ from the terms of the expired contract and which have the effect of requiring the purchaser to bear any production related costs (as defined in § 271.1101(b)) which were allocated to the seller under the expired contract.

(b) Nothing contained in paragraph (a) shall preclude a purchaser who was not a party to the expired contract from agreeing in the intrastate rollover contract to bear responsibility and pay for any increase (or portion thereof) in production-related costs, the incurrence of which is necessary in order for such person to take delivery of the natural gas subject to the intrastate rollover contract.

SUBPART G - HIGH-COST NATURAL GAS

§ 271.701 Applicability.

This subpart implements section 107(a) of the NGPA and applies to the first sale of natural gas which is deep, high-cost natural gas.

§ 271.702 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurs in the calendar month of:	The maximum lawful price is:
December 1978	$ 2.078
January 1979	$ 2.096

§ 271.703 Definition of deep, high-cost natural gas.

For purposes of this subpart, deep, high-cost natural gas is natural gas which a jurisdictional agency determines, in accordance with Parts 274 and 275, is produced:

(a) from any well, the surface drilling of which began on or after February 19, 1977; and

(b) from a completion location which is located at a depth of more than 15,000 feet.

§ 271.704 Special rule.

For purposes of determining depth under this subpart and section 107(c)(1) of the NGPA, measurement shall be the true vertical depth from the surface of the ground to the highest perforation point in the completion location.

SUBPART H - STRIPPER WELL NATURAL GAS

§ 271.801 Applicability.

This subpart implements section 108 of the NGPA and applies to any first sale of natural gas which a jurisdictional agency determines is stripper well natural gas.

§ 271.802 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurs in the calendar month of:	The maximum lawful price is:
December 1978	$ 2.224
January 1979	$ 2.243

§ 271.803 Definitions.

For purposes of this subpart:

(a) "Recognized enhanced recovery techniques" means processes or equipment, or both, which when performed or installed, increase the ultimate recovery of gas from a well. Processes qualifying as enhanced recovery techniques include mechanical as well as chemical stimulation of the reservoir formation. Equipment may include items installed in the well bore or on the surface. Normal well maintenance, repair, or replacement of equipment or facilities does not qualify as enhanced recovery techniques.

(b) "Nonassociated natural gas" means natural gas produced from a well which a jurisdictional agency determines produced an average number of barrels of crude oil per production day during the production period upon which the determination is based, which does not exceed the number of barrels determined in accordance with the following table:

If the average production of natural gas per production day during such production period was:	then average crude oil production per day may not exceed:
50 Mcf or more but less than 60 Mcf	1 bbl
30 Mcf or more but less than 50 Mcf	2 bbl
Less than 30 Mcf	3 bbl

§ 271.804 Special rules.

(a) Rate of production. For purposes of determining the rate of production from a well for which a stripper well determination is sought, the total volume of natural gas produced from the well shall constitute its daily production regardless of whether the well is completed in more than one interval or the production is separately metered from separate intervals.

(b) Averaging of production. If a determination of stripper well status is sought with respect to wells which are not individually metered, rates of production of natural gas and oil may, in the absence of other reliable evidence, be averaged equally among the non-metered wells.

(c) Applications for determinations. Applications under this subpart shall be based on a 90-day production period ending within 120 days prior to the date on which the application is filed.

(d) Maximum efficient rate of flow.

(1) Where a maximum efficient rate of flow for a well, determined in accordance with recognized conservation practices designed to maximize the ultimate recovery of natural gas, has been established by a jurisdictional agency, production of natural gas at that rate shall be deemed to be production at the maximum efficient rate of flow.

(2) In the absence of applicable recognized conservation practices designed to maximize the ultimate recovery of natural gas established by a jurisdictional agency for determining the maximum efficient rate of flow of wells producing natural gas, a well which has produced nonassociated natural gas at an average rate of 60 Mcf per day or less for a 90-day production period is presumed to have produced

at its maximum efficient rate of flow if during the 12-month period ending concurrently with the 90-day production period which is the basis for the application under paragraph (c), such well produced nonassociated natural gas at a rate which did not exceed an average of 60 Mcf per production day; or

(3) if the production data described in subparagraph (2) of this paragraph are not available, the jurisdictional agency shall, if the well has produced nonassociated natural gas at an average rate of 60 Mcf or less for a 90-day production period:

(i) make the determination as to whether the well produced at its maximum efficient rate of flow based upon other substantial evidence, such as flow tests, which measure the capability of the well to produce natural gas under normal operating conditions; or

(ii) defer making an affirmative determination and designate a 12-month period during which the applicant may secure the data described in subparagraph (2) of this paragraph, allowing the applicant 30 days from the end of such period to submit the data.

(4) The jurisdictional agency shall make a negative determination as to eligibility and give notice thereof to the applicant, any identified purchasers and the Commission, if:

(i) the applicant fails to submit production data pursuant to subparagraph (3)(ii) of this paragraph, within the time allowed; or

(ii) the production data submitted by the applicant indicate that for the 12-month period, the well produced nonassociated natural gas at a rate which exceeded an average of 60 Mcf per production day.

(5) Upon submission of an application which is to be considered pursuant to subparagraph (3)(ii) of this paragraph, the applicant, if permitted to do so by contract, may collect the maximum lawful price provided in § 271.802 from the date of filing until the date of a final determination pursuant to this subpart, subject to the interim collection requirements in Part 273.

(e) Seasonally affected wells. (1) If together with a petition for qualification as a stripper well, the applicant submits to the jurisdictional agency, production reports for a period of at least 24 months ending concurrently with the 90-day production period which is the basis for the application under paragraph (c), and if such reports demonstrate that the well is subject to seasonal fluctuations which temporarily increase average production above 60 Mcf per production day, the jurisdictional agency may, upon

request, designate the well as "seasonally affected." Such designation shall be granted by the jurisdictional agency only if it finds that the seasonal fluctuations have not and cannot reasonably be expected to increase production levels above an average of 60 Mcf per production day for any 12-month period.

(2) If at any time subsequent to a final determination of stripper well status, the operator acquires production reports for a period of 24 consecutive months which demonstrate that the well is seasonally affected, a petition may be filed with the jurisdictional agency for designation as a seasonally affected well unless the average rate of production exceeds 60 Mcf per production day for any 12-month period.

(3) If a well is designated as seasonally affected, the operator of such well and the purchaser of production from such well are exempt from the filing requirements of § 274.805 unless the average rate of production exceeds 60 Mcf per day for a 12-month period.

§ 271.805 Continuing qualification.

(a)(1) Unless exempt under § 271.804(e)(3), the operator or any purchaser of natural gas shall give written notice if:

(i) such well produces nonassociated natural gas at a rate exceeding an average of 60 Mcf per production day for any 90-day production period; or

(ii) such well which has been designated a seasonally affected well produces at an average rate in excess of 60 Mcf per day for a 12-month production period.

(2) Such notice shall, as appropriate, be given to the jurisdictional agency, the Commission, and any purchaser. Except as provided in paragraph (b) of this section, such notice shall terminate the right of any seller to continue the collection of the maximum lawful price set forth in § 271.802 for natural gas from the well identified in the notice.

(b) The operator may, at the same time the notice described in paragraph (a)(1) of this section is filed, file a petition with the jurisdictional agency for a determination under § 271.806 that the increased production of nonassociated natural gas is the result of the application of enhanced recovery techniques or, if the well has not been designated as seasonally affected, the result of seasonal fluctuations. A copy of the petition shall be provided to the jurisdictional agency, the Commission, and the purchaser together with the notice under paragraph (a)(1) of this section.

(c) Any notice required by this section shall be made within 45 days after the last day of the 90-day or the 12-month production period in which the increased production of natural gas occurred.

(d) If the notice pursuant to paragraph (a)(1) of this section is filed by a purchaser, an operator shall have 30 days from the date of the notice within which to oppose the allegation or to seek a determination from the jurisdictional agency that the increase in production is the result of the application of recognized enhanced recovery techniques or seasonal fluctuations. Unless the operator of a well, within 30 days of such notice, files a petition with a jurisdictional agency as provided in paragraph (b) of this section, a well for which notice is given under paragraph (a)(1) of this section shall immediately be disqualified as a stripper well and the right of any seller to collect the maximum lawful price set forth in § 271.802 shall terminate as of the last day of the 90-day or the 12-month production period described in the notice.

(e) If an operator files a petition with a jurisdictional agency pursuant to paragraph (b) or (d) of this section, further collection of the maximum lawful price set forth in § 271.802 shall be made subject to refund from the last day of the 90-day or the 12-month production period

described in the notice under paragraph (a)(1) of this section.

(f) If subsequent to the filing of a petition it is determined that an increase in production of natural gas is the result of recognized enhanced recovery techniques, neither the operator nor the purchaser shall be obligated to report average production levels above 60 Mcf per day during any 90-day production period unless the increased production results from a cause other than recognized enhanced recovery techniques determined to have been used.

§ 271.806 Jurisdictional agency determinations and Commission review.

(a) Upon receipt of a petition to designate a well as a seasonally affected well pursuant to § 271.804(c) or an application to determine that production in excess of an average of 60 Mcf per production day for any 90-day production period was due to enhanced recovery techniques, the jurisdictional agency shall treat the petition or application as if it were an application for an initial determination and follow the applicable provisions of Subpart A of Part 274.

(b) Upon receipt of notice of a determination under paragraph (a), the Commission will review such a determina-

tion pursuant to the applicable provisions of Subpart B of Part 275.

(c) A jurisdictional agency, when making a determination under § 271.806 (relating to production in excess of 60 Mcf per production day resulting from the application of recognized enhanced recovery techniques), may seek a declaratory order from the Commission that a process (or type of process) or the installation of equipment (or type of equipment) qualifies as recognized enhanced recovery techniques as defined in § 271.803(a) of this subpart.

SUBPART I - OTHER CATEGORIES OF NATURAL GAS

§ 271.901 Applicability.

This subpart implements section 109 of the NGPA and applies to a first sale of natural gas that is not covered by any maximum lawful price under section 102, 103, 104, 105, 106, 107, or 108 of the NGPA.

§ 271.902 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurs in the calendar month of:	The maximum lawful price is:
December 1978	$ 1.630
January 1979	$ 1.639

§ 271.903 Filing requirements.

Any person who collects a price under this subpart shall file reports required by § 276.101.

§ 271.904 Special rule.

First sales of natural gas described in section 109(a)(1), (2), (3), or (4) of the NGPA are covered by this subpart only to the extent such first sales are not covered by any maximum lawful price under section 102, 103, 104, 105, 106, 107, or 108 of the NGPA.

SUBPART J - [RESERVED]

SUBPART K - ADJUSTMENTS FOR STATE SEVERANCE TAXES, ALLOWANCES AND CERTAIN PRODUCTION-RELATED COSTS

§ 271.1100 Applicability.

(a) General. This subpart prescribes regulations under which a price for a first sale of natural gas shall not be considered to exceed the applicable maximum lawful prices set forth in Part 271 if such first sale price exceeds the maximum lawful price to the extent necessary to recover:

(1) State severance taxes under § 271.1102;

(2) Natural Gas Act allowances under § 271.1104; and

(3) production-related costs approved by order of the Commission under § 271.1105.

(b) Exclusions. Sections 271.1104, 271.1105 and 271.1106 shall not apply to any natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

§ 271.1101 Definitions.

(a)(1) Except as provided in subparagraph (2), the term "State severance tax" as used in this subpart means any severance, production, or similar tax, fee, or other levy imposed on the production of natural gas:

(i) by any State;

(ii) by any Indian tribe recognized as eligible for services provided by the Secretary of the Interior to Indians; or

(iii) by any political subdivision of a State if the authority to impose such tax, fee, or other levy is granted to such political subdivision under State law.

(2) The term "State severance tax" does not include any amount of tax which results from a provision of state law enacted on or after December 1, 1977, unless such provision of law is equally applicable to natural gas produced in such State and delivered in interstate commerce and to natural gas produced in such State and not so delivered.

(b) The term "production-related costs" as used in this subpart means costs of compressing, gathering, processing, treating, liquifaction, conditioning, or transporting natural gas, or other similar costs.

§ 271.1102 State severance taxes.

(a) Except as provided in paragraph (b) of this section, the price for any first sale of natural gas shall not be considered to have exceeded the maximum lawful price applicable to that sale as set forth in this part if such

first sale price exceeds the maximum lawful price to the extent necessary to recover State severance taxes borne by the seller.

(b) The maximum lawful prices prescribed under this part for interstate sales of natural gas produced from the Permian Basin area include State severance taxes in the amount of 2.6 cents for large producers and 3.05 cents for small producers. To the extent maximum lawful prices are established by reference to the Permian Basin area rate, only amounts of State severance tax in excess of those amounts already included may be considered under paragraph (a) of this section.

§ 271.1103 Record retention.

A seller in a first sale in which the price includes State severance taxes permitted under § 271.1102 shall retain a record of the sale which shall identify the seller, and shall retain such other records as are necessary to demonstrate that such seller has borne the amount of State severance taxes included in the sale price. Such records shall be preserved for at least three years from the date on which the sale occurred.

§ 271.1104 Natural Gas Act allowances.

(a) Applicability. The provisions of this section shall apply only to natural gas which was committed or dedicated to interstate commerce on November 8, 1978, and for which a just and reasonable rate was in effect on that date.

(b) General rule. A maximum lawful price applicable to a first sale of natural gas to which this section applies may be exceeded to the extent necessary to recover:

(1) gathering allowances, if allowable in accordance with §§ 2.56a(d) or 2.56b of this chapter; and

(2) allowances for delivery of offshore natural gas, if allowable in accordance with §§ 2.56a(e) or 2.56b(f) of this chapter.

§ 271.1105 Production-related costs.

(a) General rule. The Commission will entertain applications for a determination that the maximum lawful price applicable to a first sale of natural gas shall not be considered to be exceeded as a result of the addition to such price of an amount expended for production-related costs only as permitted by this section.

(b) Exclusion of certain natural gas. Applications under paragraph (a) of this section will not be considered

by the Commission if the natural gas for which the determination is sought:

(1) was committed or dedicated to interstate commerce on November 8, 1978, and is natural gas for which there was a just and reasonable rate in effect on that date; or

(2) is subject to an existing intrastate contract, an intrastate rollover contract or a successor to an existing intrastate contract.

(c) Costs for gathering, liquifaction, transportation, and compression. Except as provided in paragraph (b) of this section, applications under paragraph (a) of this section will be entertained by the Commission respecting costs incurred for:

(1) compression; and

(2) gathering, liquifaction, or transportation

to the extent such activities take place off the lease from which the natural gas was produced.

(d) Other production-related costs. (1) Except as provided in paragraph (b) of this section and in subparagraph (2) of this paragraph, the Commission will entertain applications under paragraph (a) of this section only with respect to production-related costs to the extent they exceed the amount attributable to meeting the following standards:

(i) total sulphur (grains per 100 cf.) 20

(ii) hydrogen sulphide (grains per 100 cf.) . . 1

(iii) water (pounds per MMcf) 7

(iv) carbon dioxide (percent by volume) 3

(v) oxygen, nitrogen, dust, dirt, gum, or other impurities in amounts in excess of which the buyer would be required to incur costs to to meet pipeline requirements.

(2) Subject to paragraph (b) of this section, the Commission will entertain applications for costs necessary to meet or exceed the standards in subparagraph (1) of this paragraph with respect to first sales of natural gas to any person for use by such person.

(e) Applications. Applications made to the Commission pursuant to this section shall be under oath and shall include the following information:

(1) identification of the maximum lawful price applicable to the first sale of the natural gas under Part 271;

(2) documents supporting the identification of the applicable maximum lawful price, including copies of any determinations by a jurisdictional agency or the Commission or copies of applications made for such determinations;

(3) a summary of the contract provisions which contain the obligations of the parties with respect to production-related costs;

(4) if the applicant has purchased the natural gas which is the subject of an application under this paragraph, documentation of the price paid by the applicant for such gas;

(5) the specific costs sought to be recovered by the applicant and a description of the method used to compute such costs; and

(6) the circumstances which make it necessary for the applicant to collect any amount in excess of the maximum lawful price provided for under Part 271.

(f) Additional information. The Commission may, upon receipt of an application made under this section, require the submission of additional information and hold or cause to be held such other proceedings as it deems necessary or appropriate.

§ 271.1106 Adjustments.

Pursuant to section 502(c) of the NGPA, any person may apply to the Commission for an adjustment on the grounds that the operation of § 271.1105 results in special hardship, inequity, or an unfair distribution of burdens to such person.

PART 273 COLLECTION AUTHORITY; REFUNDS

Subpart A - General Provisions

Sec.
273.101 Private contractual rights.
273.102 Definition of final determination.
273.103 Annual report of collections and refunds.
273.104 Cross reference.

Subpart B - Interim Collection Authority

Sec.
273.201 Transitional rule for certain new wells.
273.202 Collection pending jurisdictional agency determination of eligibility.
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273.204 Retroactive collection after final determination.

Subpart C - Refund Obligation

Sec.
273.301 General refund obligation.
273.302 Refunds of interim collections.

Authority: This part is issued under the Natural Gas Policy Act of 1978, P.L. 95-621, 92 Stat. 3350.

SUBPART A - GENERAL PROVISIONS

§ 273.101 Private contractual rights.

Authorization by this part to collect a price for natural gas does not affect any person's contractual right to purchase natural gas at a lower price.

§ 273.102 Definition of final determination.

For purposes of this part, a determination by a jurisdictional agency of eligibility to collect a maximum lawful price under Subpart B, C, G, or H of Part 271 is final at

such time as such determination is no longer subject to:

(a) remand or reversal (other than on grounds specified in section 503(d)(1)(A) or (B) of the NGPA) by the Commission under Part 275; or

(b) judicial review in the Court of Appeals under section 503(b)(4)(B) of the NGPA.

§ 273.103 Annual report of collections and refunds.

(a) General rule. A seller which makes any first sale of natural gas for which a price authorized by this part is charged or collected shall file an annual report of all collections and refunds under this part for all such first sales, beginning with the period from December 1, 1978 through December 31, 1979, and for each calendar year thereafter until all collections and refunds under this part for such first sales have been reported fully. An original and 2 copies of each annual report shall be filed with the Commission on or before April 1st of the next year.

(b) Contents. The annual report shall be filed in accordance with forms and instructions prescribed by the Commission and shall include:

(1) all collections for each first sale for which a price authorized by this part is charged or collected,

identifying the well from which such sale is made and the application for or determination of eligibility for that well;

(2) the portions of such collections which are subject to the refund undertaking required by § 273.302(b) and those portions which were secured by surety bond or placed in escrow as required by § 273.302(c); and

(3) for each first sale, the amount of any refunds paid to each purchaser and the basis for computation of that amount, together with releases signed by each purchaser to indicate payment and full satisfaction of the seller's refund obligation or a statement that the purchaser did not sign such a release.

§ 273.104 Cross reference.

For special rule applicable to resellers, see § 270.202(b).

SUBPART B - INTERIM COLLECTION AUTHORITY

§ 273.201 Transitional rule for certain new wells.

(a) General rule. (1) The price determined under the following table may be charged and collected for any first sale of natural gas from a new well to which this section applies:

If delivery occurs in the calendar month of:	The price per MMBtu which may be charged and collected is:
December 1978	$ 1.630
January 1979	$ 1.639

(2) This section does not apply to a first sale if the seller is collecting a price under the authority of §§ 273.202 or 273.203.

(b) Period of collection. (1) Except as provided in subparagraph (2), the price authorized by paragraph (a) may be charged and collected for natural gas deliveries:

(i) beginning on the date on which the seller first meets the requirements of paragraph (c); and

(ii) ending on the date on which the Commission receives a notice of jurisdictional agency determination under § 275.201.

(2) No collection may be made under this section for deliveries of natural gas on or after March 1, 1979, unless before March 1, 1979, the seller has filed an application with a jurisdictional agency for a determination respecting such natural gas under Subpart B, C, G, or H of Part 271.

(c) Filing requirements. (1) Prior to making any collection under the authority of this section, the seller shall file with the Commission and the jurisdictional agency a statement under oath that:

(i) the natural gas for which the collection is made is produced from a new well;

(ii) the seller believes in good faith that such natural gas is eligible under the NGPA to be sold at a price not less than the price specified in paragraph (a); and

(iii) the seller has filed, or will cause to be filed not later than March 1, 1979, an application with the jurisdictional agency for a determination of qualification under Subpart B, C, G, or H of Part 271. Where the seller is not eligible to apply directly for a determination, the seller shall file either a duplicate of FERC Form No. 121 already submitted to the jurisdictional agency or a statement under oath by a person eligible to file the application that it will be filed not later than March 1, 1979.

(2) The statement shall include any well identification number assigned to the well or if none has been assigned, other information sufficient to identify the well, and shall specify the extent to which such natural gas was committed or dedicated to interstate commerce on November 8, 1978, and if so committed or dedicated, the just and reasonable rate applicable to such natural gas under the Natural Gas Act on November 8, 1978, and any rate schedules for such natural gas on file with the Commission on November 8, 1978.

§ 273.202 Collection pending jurisdictional agency determination of eligibility.

(a) General rule. If an application has been filed with the jurisdictional agency for a determination of eligibility under Subpart B, C, G, or H of Part 271 (relating to new natural gas and certain OCS natural gas, natural gas from new onshore production wells, high-cost natural gas or stripper well natural gas), the price specified in § 273.201(a)(1) or the highest maximum lawful price which is specified in any of the subparts for which application is made may be charged and collected.

(b) Period of collection. Except to the extent prohibited by paragraph (c), the price authorized by paragraph (a) may be charged for natural gas deliveries occurring on or after the date on which the application is filed with the jurisdictional agency and collected for such deliveries:

(1) beginning on the date on which the seller complies with the requirements of paragraph (d); and

(2) ending on the earlier of:

(i) 18 months after the first delivery for which collection is made under this section (12 months in the case of deliveries beginning on or after May 1, 1979); or

(ii) the date on which the Commission receives a notice of jurisdictional agency determination under § 275.201.

(c) Special limitation on the period of collection Unless by March 1, 1979, the jurisdictional agency to which

application is made has notified the Commission in writing that such agency has authority to process applications for determinations under Subparts B, C, G and H of Part 271 and is making such determinations, then the price authorized to be charged and collected by paragraph (a) may not be charged and collected under this section for deliveries during the period beginning on March 1, 1979 and ending on the date on which such jurisdictional agency notifies the Commission in writing that such agency has the authority to process applications for determinations under Subparts B, C, G and H of Part 271 and is making such determinations.

(d) Filing requirements. (1) In order to make an interim collection under this section with respect to a first sale of natural gas, a seller shall file with the Commission:

(i) a statement under oath that he believes in good faith that such natural gas is eligible under the NGPA and this subchapter for a maximum lawful price not less than that to be collected;

(ii) a duplicate of FERC Form No. 121 submitted to the jurisdictional agency;

(iii) a certificate of service of this filing upon any purchasers in the form required by §§ 1.17 and 1.51 of this chapter;

(iv) either a statement certifying that collections under this section will be placed in escrow or secured by a surety bond to the extent required by § 273.302(c) or a release from the surety or escrow obligation executed by the purchaser; and

(v) a statement of the extent to which such natural gas was committed or dedicated to interstate commerce on November 8, 1978, and if so committed or dedicated, the just and reasonable rate applicable to such natural gas under the Natural Gas Act on November 8, 1978, and any rate schedules for such natural gas on file with the Commission on November 8, 1978.

(2) No filing may be made under this paragraph unless the Commission has given public notice that the jurisdictional agency to which the application for determination has been made has filed a report in conformance with § 274.105.

(e) Filing limitation. Upon termination of the interim collection authority under this section for any sale, further filings under this section cannot be made for any sale from the same well.

§ 273.203 Collection pending review of jurisdictional agency determination.

(a) General rule. If the jurisdictional agency has determined in accordance with Part 274 that natural gas

qualifies for a maximum lawful price under Subpart B, C, G, or H of Part 271, the seller may charge and collect such price during the period described in paragraph (b).

(b) Period of collection. The price authorized by paragraph (a) may be charged and collected for natural gas deliveries:

(1) beginning on the date on which the Commission receives notice under § 275.201 of a jurisdictional agency determination with respect to such gas; and

(2) ending on the date the jurisdictional agency's determination becomes final, or if the determination of the jurisdictional agency is remanded by final finding of the Commission, six months after the date of such remand.

(c) Filing requirements. No later than ten days after commencement of collection under this section, the seller shall file with the Commission and jurisdictional agency a notice of interim collection of the applicable price established by a determination of the jurisdictional agency and a certificate of service of this notice upon any purchasers in the form required by §§ 1.17 and 1.51 of this chapter. If the seller is not the operator of the well for which the determination has been made, then the notice shall identify the well and operator.

§ 273.204 Retroactive collection after final determination.

(a) General rule. If (1) a jurisdictional agency determination that first sales of natural gas from a well qualify for a maximum lawful price under Subpart B, C, G, or H of Part 271 has become final, and (2) such maximum lawful price exceeds the price collected for deliveries of such natural gas for any period between the date of filing for the determination and the date on which the determination became final, then the seller may retroactively charge and collect for such period the amount of such excess; except that if the application for determination was filed by March 1, 1979, then the amount of such excess may be computed, charged and collected for first sales of natural gas delivered after November 30, 1978.

(b) Special limitation on the period of retroactive collection. Unless by March 1, 1979, the jurisdictional agency to which application was made has notified the Commission in writing that such agency has authority to process applications for determination under Subparts B, C, G, and H of Part 271 and is making such determinations, then retroactive collections otherwise authorized by paragraph (a) may not be collected for deliveries during the period beginning on March 1, 1979 and ending on the date on which such jurisdictional agency notifies the Commission in writing that such agency has the

authority to process applications for determinations under Subparts B, C, G, and H of Part 271 and is making such determinations.

(c) Conditions. Collections may be made under this section only in accordance with the following conditions:

(1) Retroactive collections may not begin until 45 days after a determination of eligibility under Subpart B, C, G, or H of Part 271 becomes final pursuant to § 275.202.

(2) A seller may not collect any amount under this section from any purchaser unless the seller has paid to such purchaser all amounts that are due to be refunded under this subchapter by the seller to such purchaser under this subchapter on or before any date on which retroactive collections are made.

(3) Within 15 days after retroactive collection begins for any first sale, the seller shall file with the Commission:

(i) a notice specifying the total amount to be collected and the amount of and basis for any carrying charges;

(ii) a statement that the seller has paid all refunds then due to such purchaser under this subchapter; and

(iii) a statement of concurrence in the filing signed by such purchaser from whom retroactive collections are made.

(4) Collection under this section may be made only to

the extent permitted by the applicable sales contract.

(5) Carrying charges may be collected only to the extent provided by a written agreement of the parties to the applicable sales contract (or amendment thereto) which shall be included in the filing required by this paragraph. The rate of such charges may not exceed nine percent per annum.

SUBPART C - REFUND OBLIGATION

§ 273.301 General refund obligation.

Any price collected with respect to a first sale of natural gas to which this subchapter applies is collected subject to a general obligation promptly to refund any portion of such price which is in excess of the maximum lawful price, or collection of which is not authorized by this subchapter. Compliance with the specific refund requirements of § 273.302 shall not terminate the general refund obligation under this section.

§ 273.302 Refunds of interim collections.

(a) Applicability. The provisions of this section apply to any interim collections made under the authority of Subpart B of this part.

(b) General undertaking.

(1) Except as provided for in subparagraph (2), any notice of collection which is filed with the Commission

pursuant to Subpart B for a first sale of natural gas shall include an undertaking with respect to particular first sales in the following form:

AGREEMENT OF
(Name of Applicant) TO COMPLY WITH REFUND
PROVISIONS OF PART 273 OF THE COMMISSION'S REGULATIONS
UNDER THE NATURAL GAS POLICY ACT

_____

(Name of Applicant) hereby agrees and undertakes to comply with the refund provisions of Part 273 of the Commission's Regulations under the Natural Gas Policy Act insofar as they are applicable to the collections for the wells identified in the annex to this agreement.

By _____
(Authorized Signatory)

Attest:

_____ _____, 19__

(2) In lieu of filing undertakings with respect to particular first sales as provided in subparagraph (1), a seller may elect to file a general undertaking applicable to all first sales made by the seller in the following form:

AGREEMENT OF
(Name of Applicant) TO COMPLY WITH REFUND
PROVISIONS OF PART 273 OF THE COMMISSION'S REGULATIONS
UNDER THE NATURAL GAS POLICY ACT AND PART 154
OF THE COMMISSION'S REGULATIONS UNDER THE
NATURAL GAS ACT

(Name of Applicant) hereby agrees and undertakes to comply with the refund provisions of Part 273 of the Commission's Regulations under the Natural Gas Policy Act insofar as they are applicable to any collections made by or for the applicant under these regulations.

By _____

(Authorized Signatory)

Attest:

_____ _____, 19__

(3) Additional refund assurance may at any time be required by order of the Commission.

(4) Any undertaking filed under subparagraph (2) or (3) shall be signed in the manner required by § 274.201(c).

(c) Escrow. In the case of interim collections under § 273.202, the following additional requirements apply:

(1) Any amount (i) which is collected under § 273.202 and (ii) which (A) in the case of a new well, is in excess

of the price specified in § 273.201(a)(1); or (B) in the case of any other well, is in excess of the otherwise applicable maximum lawful price, shall be secured by a surety bond or held in escrow unless the purchaser has executed a written agreement which releases the seller from this obligation.

(2) Any amount held in escrow under subparagraph (1) shall be deposited in an interest-bearing account (segregated from the assets of the seller) at a financial institution which is chartered and supervised by a state or federal agency and in which deposits are insured by a state or federal agency.

(d) Records. If any collection is made under Subpart B, the seller shall keep accurate accounts of all amounts so collected for each billing period and for each purchaser; and resulting revenues as computed under the price being charged pursuant to this part; the price charged immediately prior to any interim collections; and the price prescribed by § 273.201 of this part (or any other maximum lawful price used to compute the amount bonded or escrowed under this paragraph), together with the differences in revenues so computed for each sale.

(e) Refund payment.

(1) Within 45 days after a determination that a first

sale is not eligible for the price collected under this part becomes final, the seller shall refund to the purchaser by cash or check the refund amount computed under paragraph (g) together with interest at the rate of nine percent per annum on the excess charges that have been collected from the date of payment until the date of refund.

(2) No interest is required to be paid on any portion of a refund:

(i) which represents payments of royalties or taxes to federal or state governmental authorities, except to the extent that such authorities pay interest to the seller when refunding overpayments of royalties or taxes; or

(ii) which is paid from escrow (but interest which accrued in the escrow on the amount required to be refunded shall be paid at the time of refund).

(f) Discharge of obligation. If a determination that natural gas is eligible for the price collected becomes final, then upon receipt of such final determination, the bond, escrow, or undertaking shall be discharged to the extent it applies to first sales from the well for which the determination was made. If any refunds required by this section are made in conformity with the terms and conditions of the bond, escrow, or undertaking, the bond, escrow, or undertaking shall be discharged insofar as it applies to such refund obligation.

(g) Refund computation. (1) Where the final determination that the sale is not eligible for the price collected under Subpart B also includes a final determination of the maximum lawful price for that sale, that finally determined price, to the extent permitted by the applicable sales contract, shall be used to compute the excessive interim collections and refund amount.

(2) In any other case, the appropriate maximum lawful price specified under Subpart D, E, F, or I of Part 271, to the extent permitted by the applicable sales contract, shall be used to compute the excessive interim collections and refund amount.

REPORT OF AMOUNTS COLLECTED SUBJECT TO REFUND AND AMOUNTS REFUNDED
Section 273.103 of Regulations

Filing Party:_____ Code:_____ Report Period:_____

API Well No.	Purchaser	Code	Contract Date	Volume Sold (MMcf)	Price Collected	Amount Collected Subject To Refund	Amount Refunded

PART 274 - DETERMINATIONS BY JURISDICTIONAL AGENCIES

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274.401 Delegation of authority to receive certain reports.

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Sec.
274.501 Jurisdictional agency.

Authority: This part is issued under the Natural Gas Policy Act of 1978, P.L. 95-621, 92 Stat. 3350.

SUBPART A - GENERAL PROVISIONS

§ 274.101 Applicability.

This part applies to determinations of jurisdictional agencies (as defined in § 274.501) made under the following subparts of Part 271:

(a) Subpart B (relating to new natural gas and certain OCS natural gas);

(b) Subpart C (relating to new, onshore production wells);

(c) Subpart G (relating to high-cost natural gas); and

(d) Subpart H (relating to stripper well natural gas).

§ 274.102 Definition of determination.

For purposes of this part and Part 275, a determination has been made by a jurisdictional agency when such determination is administratively final before such agency.

§ 274.103 Determinations by jurisdictional agencies.

A jurisdictional agency shall make determinations to which this part applies in accordance with procedures applicable to it under the law of its jurisdiction for making such determinations or for making comparable determinations.

§ 274.104 Notice to the Commission.

(a) Affirmative determinations. Within 15 days after making a determination that natural gas qualifies for a maximum lawful price under this part, the jurisdictional agency shall give written notice of such determination to the Commission. Unless alternative notice requirements under § 274.207 have been approved, such notice shall include the following:

(1) a list of all participants in the proceeding as well as any persons who submitted or who sought an opportunity to submit written comments (whether or not such persons participated in the proceeding);

(2) a statement indicating whether the matter was opposed before the jurisdictional agency;

(3) the information set forth in paragraph (a)(1) through (7) of § 274.105 as applied to the determination in question, unless the jurisdictional agency has on file with the Commission a report describing its determination process under that section; and

(4) a copy of the application together with a copy or description of other materials in the record upon which the determination by the jurisdicational agency was made; and

(5) an affirmative finding that the information contained in the notice to the Commission pursuant to this section includes all of the information required to be filed by the applicant under Subpart B of Part 274 or under § 274.207, and in any case in which other materials in the record constitute portions of such information, a copy of those portions of the record.

(b) Negative determinations. Within 15 days after making a determination that natural gas does not qualify for a maximum lawful price under this part, the jurisdictional agency shall give written notice of such determination to the Commission, including a copy of FERC Form No. 121; except that if the applicant or any aggrieved party so requests within the 15 days following the determination, the notice shall include all of the information specified in paragraph (a) of this section.

§ 274.105 Reports of determination process.

(a) Report. A jurisdictional agency may file with the Commission a report which states that it will take such steps as are reasonably necessary or appropriate to perform its functions under this part and which describes the method by which such agency will make determinations to which this part applies. The report shall be in narrative form and shall include:

(1) any filing requirements imposed by the jurisdictional agency in addition to those required by Subpart B of this part including specific forms; as well as any more specific identification of documents listed as minimum requirements as provided in Subpart B;

(2) the type of notice of filing that applicants will be required to give;

(3) the public or specific notice that will be given by the agency of filings, hearings, and determinations;

(4) the internal procedures applicable to such determinations, including specific references to the use of hearings, examiners, and formal consideration by the agency;

(5) the extent to which applicable rules permit interested parties to intervene, participate, or express views in proceedings before the agency;

(6) a description of the relevant data contained in the official records of the agency or contained in the official records of other agencies to which the jurisdictional agency has access; and

(7) a detailed explanation of the manner in which the agency will review applications including identification of the official records which will be examined.

(b) Change in procedures. The jurisdictional agency shall give written notice to the Commission of any change

in procedures described in the report filed pursuant to this section.

(c) Public files. Reports and any changes thereto filed by the jurisdictional agency will be placed in the public files of the Commission.

SUBPART B - REQUIREMENTS FOR FILINGS WITH JURISDICTIONAL AGENCIES

§ 274.201 General requirements.

(a) Filing requirements applicable if alternative requirements are not adopted. The provisions of §§ 274.201 through 274.206 of this subpart apply to the extent not superseded by alternative filing requirements which have taken effect under § 274.207.

(b) Who may file. An application to which this subpart applies may be filed with the jurisdictional agency by any person the jurisdictional agency designates as eligible to make filings with respect to the well for which the application is made.

(c) Signature. If the person filing an application under this part is an individual, the filing shall be signed by such individual, or in the case of a minor or other legally disabled person, his duly qualified legal representative. If the person making such filing is a corporation,

partnership, or trust, the filing shall be signed by a responsible official of the corporation, a general partner of the partnership, or the trustee of the trust. In the case of any other legal entity, the operator of the well may sign the application. An operator under a joint operating agreement may sign an application for a well covered by the operating agreement if notice of the application is given by the operator to all other parties to the joint operating agreement and that fact is certified in the application.

(d) Additional information. The documents required by this subpart are the minimum required in support of a request for a determination. The jurisdictional agency may require additional support as it deems appropriate, and may more specifically identify the documents indicated as the minimum required.

(e) Notice to purchasers. Where an application for a determination is sought for natural gas for which the applicant has an identified purchaser, the application shall include a statement that the applicant has delivered or mailed a copy of the completed FERC Form No. 121 to the purchaser.

§ 274.202 New natural gas.

(a) Applications for determination. A person seeking a determination for purposes of Subpart B of Part 271 that

production from a well qualifies as new natural gas shall file an application with the jurisdictional agency for a determination that:

(1) such production is from a new OCS lease, in accordance with paragraph (b);

(2) such production is from a new onshore well, in accordance with paragraph (c); or

(3) such production is from a new onshore reservoir, in accordance with paragraph (d).

(b) New OCS lease. For purposes of demonstrating that natural gas is, or is to be, produced from a new OCS lease, the applicant shall file:

(1) FERC Form No. 121;

(2) a statement by the applicant under oath that the natural gas is, or is to be, produced from a new OCS lease which is a lease of submerged acreage, entered into with the Secretary of the Interior on or after April 20, 1977; and

(3) a copy of the OCS lease or such other identification of the lease as the jurisdictional agency may permit.

(c) New onshore wells. An application for a determination that a well is a new onshore well may be filed under subparagraph (1) or (2) of this paragraph, or both.

(1) 2.5 mile test. For purposes of demonstrating that a new onshore well is not within 2.5 miles of any marker well, the applicant shall file:

(i) FERC Form No. 121;

(ii) the well completion report;

(iii) the directional drilling survey, if the jurisdictional agency requires such a survey to be conducted;

(iv) a location plat which locates and identifies the well for which the determination is sought and any other well which is producing, or produced after January 1, 1970, natural gas and is within the 2.5 mile radius drawn from the well for which a determination is sought;

(v) a statement by the applicant under oath:

(A) that he has made, or has caused to be made, pursuant to his instructions, a diligent search of all records (including but not limited to production, severance tax, and royalty payment records) which are reasonably available and contain information relevant to the determination of eligibility;

(B) describing the search made, the records reviewed, the location of such records, and a description of any records which he believes may contain information relevant to the determination but which he has determined are not reasonably available to him;

(C) that on the basis of the results of this search and examination, he has concluded that to the best of his information, knowledge and belief, there is no marker well

within 2.5 miles of the well for which he seeks a determination; and

(D) that he has no knowledge of any other information not described in the application which is inconsistent with his conclusion; and

(vi) if the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files.

(2) 1,000 feet deeper test. For purposes of demonstrating that the completion location of a new onshore well is at least 1,000 feet deeper than the deepest completion location of each marker well within a 2.5 mile radius of the well for which a determination is sought, the applicant shall file:

(i) FERC Form No. 121;

(ii) the well completion report;

(iii) a location plat which locates and identifies the well for which the determination is sought and all wells which are producing, or produced after January 1, 1970, natural gas within the 2.5 mile radius drawn from the well for which a determination is sought; including specific identification of all marker wells within the 2.5 radius drawn from the well for which a determination is sought;

(iv) a list of the deepest completion locations for all marker wells identified on the location plat;

(v) the directional drilling survey, if the jurisdictional agency requires such survey to be conducted;

(vi) a statement by the applicant, under oath:

(A) that he has made, or has caused to be made pursuant to his instructions, a diligent search of all records (including but not limited to production, State severance tax, and royalty payment records) which are reasonably available and contain information relevant to the determination of eligibility;

(B) describing the search made, the records reviewed, the location of such records, and a description of any records which he believes may contain information relevant to the determination but which he has determined are not reasonably available to him;

(C) that on the basis of the results of this search and examination, he has concluded that to the best of his information, knowledge and belief, there is no marker well within 2.5 miles of the well for which he seeks a determination which has a completion location less than 1,000 feet above the completion location of the new well; and

(D) that he has no knowledge of any other information not described in the application which is inconsistent with his conclusion; and

(vii) if the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files.

(d) New onshore reservoir.

(1) For purposes of demonstrating that production is from a new onshore reservoir, the applicant shall file:

(i) FERC Form No. 121;

(ii) geological information sufficient to support a determination that the reservoir is a new onshore reservoir. Such information shall include to the extent reasonably available to the applicant at the time the application is filed:

(A) well logs;

(B) bottom hole or surface pressure surveys;

(C) well potential tests;

(D) formation structure maps;

(E) a subsurface cross-section chart; and

(F) a gas analysis;

(iii) the well completion report;

(iv) the directional drilling survey if the jurisdictional agency requires such a survey to be conducted; and

(v) a statement by the applicant, under oath:

(A) that he has made, or has caused to be made pursuant to his instructions, a diligent search of all records

(including but not limited to production, State severance tax, and royalty payment records) which are reasonably available and contain information relevant to the determination of eligibility;

(B) describing the search made, the records reviewed; the location of such records, and a description of any records described in clause (ii) of this subparagraph or any records which he believes may contain information relevant to the determination but which he has determined are not reasonably available to him;

(C) that on the basis of the results of this search and examination, he has concluded that to the best of his information, knowledge and belief, the natural gas to be produced and for which he seeks a determination is from a new onshore reservoir;

(D) that he has no knowledge of any other information not described in the application which is inconsistent with his conclusion; and

(vi) if the jurisdictional agency so requires, certified copies of records relied on by the applicant, including copies of the agency's official files.

(2) The applicant, in his statement under oath, shall also answer, to the best of his information, knowledge and

belief, and on the basis of the results of his search and examination, the following questions:

(i) was natural gas produced in commercial quantities from the reservoir prior to April 20, 1977?

(ii)(A) was the reservoir penetrated before April 20, 1977, by an old well from which natural gas or crude oil was produced in commercial quantities from any reservoir?

(B) if the question in clause (ii)(A) is answered in the affirmative, could natural gas have been produced in commercial quantities from the reservoir before April 20, 1977, from any old well described in clause (ii)(A)?

(C) if the natural gas is to be produced through an old well, were suitable facilities for the production and delivery to a pipeline of such natural gas in existence on April 20, 1977?

(D) if the applicant is unable to answer the questions in clauses (B) and (C) in the negative, the applicant shall provide the information upon which he bases his conclusion that the natural gas for which he seeks a determination is to be produced from a new onshore reservoir.

§ 274.203 New reservoirs on old OCS leases.

A person seeking a determination for purposes of Subpart B of Part 271 that natural gas is produced from a new reservoir on an old OCS lease (as defined in

§ 271.203(b)), shall file an application with the jurisdictional agency which contains the following items:

(a) FERC Form No. 121;

(b) the date the reservoir was penetrated;

(c) geological information sufficient to support a determination that the reservoir is a new reservoir on an old OCS lease. Such information shall include to the extent reasonably available to the applicant at the time of the determination:

(1) well logs;

(2) bottom hole or surface pressure surveys;

(3) well potential tests;

(4) formation structure maps;

(5) a subsurface cross-section chart;

(6) a gas analysis;

(d) the well completion report;

(e) if the date of penetration of the reservoir is prior to July 27, 1976:

(1) the results of any production test meeting the requirements of OCS Order No. 4 demonstrating that, as of the time of such test, the reservoir was not capable of producing in paying quantities;

(2) any production capability evidence meeting the requirements of OCS Order No. 4 demonstrating that, as of

the time such evidence was obtained, the reservoir was not capable of producing in paying quantities;

(3) an induction-electric log, sidewall cores and core analysis, or a wire line formation test indicating that, as of the time of such tests, the reservoir was not capable of producing in commercial quantities; or

(4) a statement by the applicant, under oath, that no such production tests were performed and that no evidence existed on the date the reservoir was penetrated that the reservoir was capable of producing in paying quantities;

(f) a statement by the applicant, under oath:

(1) that he has made, or has caused to be made pursuant to his instructions, a diligent search of all records (including but not limited to production and royalty payment records) which are reasonably available and contain information relevant to the determination of eligibilitiy;

(2) describing the search made, the records reviewed, the location of the records, and a description of any records which he believes may contain information relevant to the determination but which he has determined are not reasonably available to him;

(3) that on the basis of the results of this search and examination, he has concluded that to the best of his information, knowledge and belief, the natural gas for

which he seeks a determination is produced on an old lease on the OCS from a reservoir which was not discovered before July 27, 1976; and

(4) that he has no knowledge of any other information not described in the application which is inconsistent with his conclusion; and

(g) if the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files.

§ 274.204 New, onshore production wells.

A person seeking a determination for purposes of Subpart C of Part 271 that a well is a new, onshore production well shall file an application with the jurisdictional agency which contains the following items:

(a) FERC Form No. 121;

(b) the well completion report;

(c) a location plat which locates and identifies the well for which a determination is sought and all other wells within the proration unit in which the well for which a determination is sought is located;

(d) a statement by the applicant, under oath:

(1) that the surface drilling of the well for which he seeks a determination was begun on or after February 19, 1977;

(2) that the well satisfies any applicable federal or state well-spacing requirements; and that the well is not within a proration unit:

(i) which was in existence at the time the surface drilling of the well began;

(ii) which was applicable to the reservoir from which such natural gas is produced; and

(iii) which applied to any other well which either produced natural gas in commercial quantities or the surface drilling of which was begun before February 19, 1977, and was thereafter capable of producing natural gas in commercial quantities;

(3) that he has concluded that to the best of his information, knowledge and belief, the natural gas for which he seeks a determination is produced from a new, onshore production well and the basis for such conclusion; and

(4) that he has no knowledge of any other information not described in the application which is inconsistent with his conclusions;

(e) if the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files; and

(f) if the applicant is seeking a determination with respect to a new well drilled into an existing proration

unit, then pursuant to § 271.304, the applicant must, in addition to the filing requirements listed in paragraphs (a) through (e) of this section demonstrates by appropriate geological evidence that the new well is necessary to effectively and efficiently drain a portion of the reservoir covered by the proration unit which cannot be effectively and efficiently drained by any existing well within the proration unit.

§ 274.205 High-cost natural gas.

A person seeking a determination for purposes of Subpart G of Part 271 that natural gas is produced from a well which is a deep, high-cost well shall file an application with the jurisdictional agency which contains the following items:

(a) FERC Form No. 121;

(b) all well completion reports for the well for which a determination is sought;

(c) well logs or well servicing company reports or such other information which will corroborate the depth of the completion location reported in the well completion report;

(d) directional drilling surveys if available;

(e) a statement by the applicant, under oath, that the

surface drilling of the well for which he seeks a determination began on or after February 19, 1977, and that the well completion location is below a true vertical depth of 15,000 feet; and that he has no knowledge of any information not described in the application which is inconsistent with his conclusions; and

(f) if the jurisdictional agency so requires, certified copies of records relied on by the applicant, including copies of the agency's official files.

§ 274.206 Stripper well natural gas.

A person seeking a determination for purposes of Subpart H of Part 271 that a well either qualifies or continues to qualify as a stripper well shall file an application with the jurisdictional agency which contains the following items:

(a) Application for determination. For purposes of initially qualifying a stripper well, the applicant shall file:

(1) FERC Form No. 121;

(2) production records, if available, and if not, tax records, if available, or verified copies of billing statements upon which the average production for the 90-day production period is based;

(3) a copy of the results of any tests which measure the production capability of the well; and, if such test

results are not available and the maximum efficient rate of flow has not been previously established:

(i) production records, if available, and if not, tax records, if available, or verified copies of billing statements for 12 calendar months ending on the last day of the 90-day production period upon which the application is based, which demonstrate that the well produced non-associated natural gas at a rate which did not exceed an average of 60 Mcf per production day during the 12-month period;

(ii) if the well for which a determination is sought has produced nonassociated natural gas at an average rate not in excess of 60 Mcf per production day for a 90-day production period within 120 days of the date of filing, but such an average rate of production has not been experienced for a 12-month period, the applicant shall file, as soon as practicable but in no event later than 10 months after the date the application for the determination is filed with the jurisdictional agency, either production records, if available, and if not, tax records, if available, or verified copies of billing statements for the 12-month period, including any part of the 90-day production period upon which the application is based, which demonstrates that such well produced nonassociated natural gas at a

rate which did not exceed an average of 60 Mcf per production day during such period; or

(iii) such other evidence as the applicant may submit upon which the jurisdictional agency could establish the maximum efficient rate of flow;

(4) the number of days natural gas was not produced during the 90-day production period and a description of the state law or conservation practice recognized or approved by the state agency having regulatory jurisdiction over the production of natural gas which prohibited production;

(5) the number of days not included in the 90-day production period and a statement of the reasons why each day was excluded except to the extent they are covered under subparagraph (4);

(6) the production records for crude oil produced from the well for the 90-day production period upon which the application is based;

(7) an inventory of the lease and production equipment used for the well for the past 24 months or for such lesser period as the well has been in production prior to date of filing, as well as the identification of any equipment or processes used in connection with recognized enhanced recovery techniques during the completion of

the well or during production subsequent to the completion of the well but prior to the filing for a determination;

(8) a statement by the person signing the application, under oath, that he has made, or has caused to be made pursuant to his instructions, a diligent search of all records which are reasonably available and contain information relevant to the determination; a description of the search made, the records reviewed, the results of this search and examination he has concluded that to the best of his information, knowledge and belief, the well qualifies as a stripper well; and that he has no knowledge of any other information which is inconsistent with his conclusion;

(9) if the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files.

(b) Notice by an operator or purchaser of an increase in production. For purpose of the notices required under § 271.805, the person filing shall include:

(1) the names and addresses of the operator and purchaser(s) with a designation of who is filing the notice;

(2) identification of the subject well and accurate record reference to the original determination qualifying the well as a stripper well;

(3) the monthly production reports, tax records or billing statements upon which the notice is based for the period of production in question;

(4) a statement of the average production per production day for the period in question;

(5) a statement that all of the information contained in the notice is true to the best of his information, knowledge and belief; and that the notice has been served on the appropriate entities specified in § 271.805; and

(6) if the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files.

(c) Determination of increased production resulting from enhanced recovery techniques. For purposes of a determination that increased production resulted from the use of enhanced recovery techniques, the applicant shall file:

(1) the names and addresses of the applicant and purchaser(s);

(2) an identification of the well and accurate record reference to the original determination qualifying the well as a stripper well and the notice, if any, filed by a purchaser pursuant to § 271.805;

(3) a description of all processes used or equipment installed together with all dates of use or installation;

(4) a statement, under oath, that to the best of his information, knowledge and belief, the information supplied and the conclusions drawn are true, that the operator has no knowledge of any information not described in the application which is inconsistent with any of his conclusions; and that the notice has been served on the appropriate entities specified in § 271.805; and

(5) if the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files.

(d) Designation that a well is seasonally affected. For purposes of a designation that a well is seasonally affected, the applicant shall file:

(1) the names and addresses of the applicant and purchaser(s);

(2) an identification of the well and accurate record reference to the original determination qualifying the well as a stripper well and any notice filed by a purchaser pursuant to § 271.805;

(3) production records, tax records or billing statements for a period of 24 months, including the 90-day or

12-month production period which is the subject of the notice by the operator or the purchaser;

(4) a description of the nature of the seasonal fluctuations as inferred from the data supplied;

(5) a statement, under oath, that the production records, tax records or billing statements relied upon in the application for the designation are correct; that the operator has no knowledge of any information not described in the application which is inconsistent with any of his conclusions; and that the notice has been served on the appropriate entities specified in § 271.805; and

(6) if the jurisdictional agency so requires, certified copies of the records relied on by the applicant including copies of the agency's official files.

§ 274.207 Alternative filing and notice requirements.

(a) General. Upon written application by a jurisdictional agency pursuant to this section, the Commission may approve:

(1) filing requirements which differ from those in §§ 274.201 through 274.206 of this subpart; and

(2) notice requirements which differ from those in § 274.104 of this subpart;

(b) Contents of applications. Applications for approval of alternative filing or notice requirements shall include:

(1) each requirement of this part for which an alternative is proposed;

(2) a description of the specific requirements which will replace the requirements in subparagraph (1), including copies of any forms to be used by the agency;

(3) the reasons for requesting approval of each alternative requirement, which may include the fact that such information is not available; and

(4) the basis for the belief that filings under the alternative filing requirements provide substantial evidence on which the jurisdictional agency may base a determination or that notice under the alternative notice requirements provides the Commission with an adequate basis upon which to review the determination.

(c) Commission review of applications. Upon receipt of an application pursuant to this section, the Commission shall give public notice of such application and after review of any written comments, may issue an order approving the alternative requirements. The Commission will publish the order in the Federal Register.

(d) Effective date of alternative filing and notice requirements. (1) With respect to applications received by a jurisdictional agency after the effective date of approval of alternative filing requirements, such alternate

requirements as are specified and approved shall apply in lieu of the provisions of §§ 274.201 through 274.206 of this subpart.

(2) With respect to determinations made by a jurisdictional agency after the effective date of approved alternative notice requirements, the alternative notice requirements as are specified and approved shall apply in lieu of the provisions of § 274.104 of this subpart.

(e) Termination of alternative filing and notice requirements. (1) A jurisdictional agency may, upon notice to the Commission, discontinue the use of any alternative filing or notice requirements approved under this subpart.

(2) The Commission may, after a public comment period of no less than 30 days give notice to a jurisdictional agency that the Commission has terminated its approval of alternative filing or notice requirements, if it finds that the alternative filing or notice requirements:

(i) are not sufficient to carry out the purpose of the NGPA; or

(ii) after notice and opportunity for hearing, the jurisdictional agency has not complied, or required compliance, with the alternative provisions.

(3) Applications for determinations received by jurisdictional agencies after notice of termination of

the applicability of alternative filing requirements pursuant to this section shall be subject to the filing requirements set forth in §§ 274.201 through 274.206 of this subpart.

(4) Notice of determinations made by jurisdictional agencies after notice of termination of the applicability of alternative notice requirements pursuant to this section shall be subject to the notice requirements set forth in § 274.104 of this subpart.

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FERC-121

Form Approved
OMB No. 036-R0381

U.S. DEPARTMENT OF ENERGY
Federal Energy Regulatory Commission
Washington, D.C. 20426

APPLICATION FOR DETERMINATION OF THE MAXIMUM LAWFUL PRICE UNDER THE NATURAL GAS POLICY ACT (NGPA)

(Sections 102, 103, 107 and 108)

PLEASE READ BEFORE COMPLETING THIS FORM:

General Instructions:

Complete this form if you are applying for price classification under sections 102, 103, 107 or 108 of the NGPA. A separate application is required for each well. If any reservoir qualifies for a category which differs from the category applicable to the producing well, separate applications must be made for the producing well and the reservoir. Complete each appropriate item on the reverse side of this page. The code numbers used in items 4.0 and 6.0 can be obtained from the Buyer/Seller Code Book. If there is more than one purchaser or contract, identify the additional information in the space below. Enter any additional remarks in the space below.

Submit the completed application to the appropriate Jurisdictional Agency as listed in title 18 of the CFR, part 270 103. If there are any questions, call (202) 275-4539.

Specific Instructions for Item 2.0, Type of Determination:

Section of NGPA	Category Code	Description
102	1	New OCS Lease
102	2	New onshore well (2.5 mile test)
102	3	New onshore well (1,000 feet deeper test)
102	4	New onshore reservoir
102	5	New reservoir on old OCS Lease
103	–	New onshore production well
107	–	High cost natural gas
108	–	Stripper well

Other Purchasers/Contracts:

Contract Date (Mo. Day Yr.)	Purchaser	Buyer Code

Remarks:

FT7900806/1-2

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1.0 API well number. (If not available, leave blank. 14 digits.)	
2.0 Type of determination being sought: (Use the codes found on the front of this form.)	Section of NGPA / Category Code
3.0 Depth of the deepest completion location: (Only needed if sections 103 or 107 in 2.0 above.)	feet
4.0 Name, address and code number of applicant: (35 letters per line maximum. If code number not available, leave blank.)	Name / Seller Code Street City / State / Zip Code
5.0 Location of this well. (Complete (a) or (b).) (a) For onshore wells (35 letters maximum for field name.)	Field Name County / State
(b) For OCS wells.	Area Name / Block Number Date of Lease Mo Day Yr. / OCS Lease Number
(c) Name and identification number of this well. (35 letters and digits maximum.)	
(d) If code 4 or 5 in 2.0 above, name of the reservoir. (35 letters maximum.)	
6.0 (a) Name and code number of the purchaser. (35 letters and digits maximum. If code number not available, leave blank.)	Name / Buyer Code
(b) Date of the contract	Mo Day Yr.
(c) Estimated annual production	MMcf.

		(a) Base Price ($/MMBTU)	(b) Tax	(c) All Other Prices (Indicate (+) or (–).)	(d) Total of (a), (b) and (c)
7.0 Contract price (As of filing date. Complete to 3 decimal places.)		—.— — —	—.— — —	—.— — —	—.— — —
8.0 Maximum lawful rate (As of filing date. Complete to 3 decimal places.)		—.— — —	—.— — —	—.— — —	—.— — —

9.0 Person responsible for this application:

Name / Title

Signature

Date Application is Completed / Phone Number

Agency Use Only

Date Received by Juris. Agency

Date Received by FERC

FT7900806/2-2

SUBPART C - WAIVERS

§ 274.301 Applicability.

This subpart contains the procedures by which jurisdictional agencies and the Commission may enter into agreements under which jurisdictional agencies waive to the Commission authority to make the determinations set forth in Subpart A of this part.

§ 274.302 Requests for waiver.

(a) General. A jurisdictional agency may file with the Commission a request to enter into a written agreement waiving, in whole or in part, the authority of the jurisdictional agency to make determinations pursuant to Subpart A of this part.

(b) Contents of requests. Requests filed pursuant to this section shall include:

(1) the name of the jurisdictional agency;

(2) each class of determination for which a waiver is sought;

(3) the reasons the jurisdictional agency believes a waiver is necessary; and

(4) the length of time any waiver is to remain in effect.

(c) Commission action on requests. After consideration of any request under this section, the Commission

may execute a written agreement which shall provide:

(1) that upon written acceptance of the agreement by the jurisdictional agency, the Commission, in lieu of such agency, will make the determinations waived in the agreement, and

(2) any terms and conditions the Commission deems appropriate with respect to such waiver, including the date on which the waiver shall terminate; and

(3) the effective date of the waiver.

§ 274.303 Termination or revocation of agreements.

Agreements pursuant to this subpart shall remain in effect until public notice is given by the Commission that:

(a) the agreement of waiver has expired pursuant to a term or condition of the waiver agreement;

(b) the Commission has received written notice from the jurisdictional agency that such agency terminates the agreement as of a specified date and assumes the authority to make determinations under Subpart A of this part; or

(c) the Commission has revoked the agreement pursuant to a term or condition of the waiver agreement.

§ 274.304 Notice.

The Commission shall cause public notice to be made of agreements of waiver and of any termination or revocation of a waiver.

SUBPART D - DELEGATIONS TO STATE AGENCIES

§ 274.401 Delegation of authority to receive certain reports.

(a) Delegation. The Commission may delegate to a state agency the authority to recieve the reports required by §§ 276.102(d) and 276.103(d) to be filed by an intrastate pipeline pursuant to sections 105 and 106(b) of the NGPA.

(b) State agency. A delegation pursuant to this section may be made only to a state agency with jurisdiction over the rates and charges of the intrastate pipelines that would be making the required filing.

(c) Terms of the delegation. Such delegation shall be contained in an agreement executed between the Commission and the state agency, and shall contain such terms and conditions as the parties deem appropriate. Notice of the delegation agreement will be published in the Federal Register.

SUBPART E - IDENTIFICATION OF STATE AND FEDERAL JURISIDICTIONAL AGENCIES

§ 274.501 Jurisdictional agency.

(a) Definition. Except as provided in paragraph (b), "jurisdictional agency" means:

(1) With respect to a well on the OCS, one of the following offices of the United States Geological Survey:

(i) for OCS wells located in the Gulf Coast Region:

Area Oil & Gas Supervisor
Suite 336
3301 N. Causeway Blvd.
Metairie, LA 70010

(ii) for OCS wells located in the Atlantic Region:

Area Oil & Gas Supervisor
Atlantic OCS Operations
Suite 204
1725 K Street, N. W.
Washington, DC 20244

(iii) for OCS wells located offshore Alaska:

Area Oil & Gas Supervisor
P. O. Box 259
Suite 109
800 A Street
Anchorage, AK 99510

(iv) for OCS wells located offshore California:

Area Oil & Gas Supervisor
7211 Federal Building
300 North Los Angeles Street
Los Angeles, CA 90012

(2) With respect to a well the surface location of which is on lands within the boundaries of a State (including Federal lands and offshore State lands), the agency specified in the following table:

State in which well is located	Jurisdictional Agency for wells on Federal lands	Jurisdictional Agency for wells on Other lands
Alabama	Area Oil & Gas Supervisor Suite 204 1725 K St., N. W. Washington, DC 20244	Oil & Gas Supervisor State Oil & Gas Board Drawer O University, AL 35486
Alaska	Area Oil & Gas Supervisor P.O. Box 259 Suite 109 800 A Street Anchorage, AK 99510	Oil & Gas Conservation Division Department of Natural Resources 3001 Porcupine Drive Anchorage, AK 99504
Arizona	Area Oil & Gas Supervisor P. O. Box 26124 505 Marquette Ave., N. W. Albuquerque, NM 87125	Oil & Gas Conservation Commission Suite 420 1645 W. Jefferson Phoenix, AZ 85007
Arkansas	Area Oil & Gas Supervisor 6136 E. 32nd Place Tulsa, OK 74135	Conservation & Commerce Oil and Gas Commission 314 East Oak El Dorado, AR 71730
California	Area Oil & Gas Supervisor 7211 Federal Building 300 N. Los Angeles St. Los Angeles, CA 90012	Department of Conservation Division of Oil & Gas 1416 Ninth St., Rm 1316 Sacramento, CA 95814

State in which well is located	Jurisdictional Agency for wells on: Federal lands	Jurisdictional Agency for wells on: Other lands
Colorado	Area Oil & Gas Supervisor P. O. Box 26124 505 Marquette Ave., N. W. Albuquerque, NM 87125	Oil & Gas Conservation Commission 1313 Sherman Street Room 721 Denver, CO 80203
Florida	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Administrator of Oil & Gas Bureau of Geology Department of Natural Resources 903 W. Tennessee Street Tallahassee, FL 32304
Georgia	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Department of Natural Resources Geologic & Water Resources Division 19 Martin Luther King Drive, SW Atlanta, GA 30334
Idaho	Area Oil & Gas Supervisor 7211 Federal Bldg. 300 North Los Angeles Street Los Angeles, CA 90012	Idaho Public Utilities Commission Statehouse Mail Boise, ID 83720
Illinois	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Department of Mines and Minerals Oil and Gas Division 704 Stratton Office Building 400 S. Spring Street Springfield, IL 62706
Indiana	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Department of Natural Resources Oil and Gas Division 606 State Office Bldg. 100 N. Senate Avenue Indianapolis, IN 46204

State in which well is located	Jurisdictional Agency for wells on: Federal lands	Jurisdictional Agency for wells on: Other lands
Kansas	Area Oil & Gas Supervisor 6136 East 32nd Place Tulsa, OK 74135	Corporation Commission State Office Building Topeka, KS 66612
Kentucky	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Department of Mines and Minerals Oil and Gas Division Box 680 Lexington, KY 40501
Louisiana	Area Oil & Gas Supervisor 6136 East 32nd Place Tulsa, OK 74135	Office of Conservation Box 44275 Baton Rouge, LA 70804
Maryland	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Energy and Coastal Zone Administration Department of Natural Resources Tawes State Office Bldg. Annapolis, MD 21404
Michigan	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Department of Natural Resources Box 30028 Lansing, MI 48909
Mississippi	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	State Oil and Gas Board Box 1332 Jackson, MS 39205
Montana	Area Oil & Gas Supervisor P. O. Box 2859 2002 Federal Bldg. & Post Office Casper, WY 82602	Oil and Gas Conservation Division Department of Natural Resources and Conservation 15 Poly Drive Billings, MT 59101

State in which well is located	Jurisdictional Agency for wells on Federal lands	Jurisdictional Agency for wells on Other lands
Nebraska	Area Oil & Gas Supervisor P. O. Box 2859 2002 Federal Bldg. & Post Office Casper, WY 82602	Oil and Gas Conservation Commission Box 399 Sidney, NE 69162
Nevada	Area Oil & Gas Supervisor 7211 Federal Bldg. 300 North Los Angeles Street Los Angeles, CA 90012	Department of Conservation and Natural Resources Division of Mineral Resources Capitol Complex, 201 S. Fall Street Carson City, NV 89710
New Mexico	Area Oil & Gas Supervisor P. O. Box 26124 Marquette Ave, N. W. Albuquerque, NM 87125	Department of Energy and Minerals Oil Conservation Division Box 2088 Santa Fe, NM 87501
New York	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Department of Environmental Conservation Bureau of Mineral Resources 50 Wolf Road Albany, NY 12233
North Carolina	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Department of Natural Resources and Community Development 512 N. Salisbury Street Raleigh, NC 27611

State in which well is located	Jurisdictional Agency for wells on Federal lands	Jurisdictional Agency for wells on Other lands
North Dakota	Area Oil & Gas Supervisor P. O. Box 2859 2002 Federal Bldg. & Post Office Casper, WY 82602	Geological Survey University Station Grand Forks, ND 58202
Ohio	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Ohio Department of Natural Resources 1932 Belcher Drive Fountain Square Columbus, OH 43224
Oklahoma	Area Oil & Gas Supervisor 6136 East 32nd Place Tulsa, OK 74135	Corporation Commission Jim Thorpe Building Oklahoma City, OK 73105
Oregon	Area Oil & Gas Supervisor 7211 Federal Bldg. 300 North Los Angeles Street Los Angeles, CA 90012	Department of Geology & Mineral Industries 1069 State Office Bldg. Portland, OR 97201
Pennsylvania	Area Oil & Gas Supervisor Suite 204 1725 E Street, N. W. Washington, DC 20244	Department of Environmental Resources Division of Oil & Gas 1205 Kossman Bldg. 100 Forbes Avenue Pittsburgh, PA 15222
South Carolina	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	South Carolina Public Service Commission P. O. Drawer 11649 Columbia, SC 29211

State in which well is located	Jurisdictional Agency for wells on Federal lands	Jurisdictional Agency for wells on Other lands
South Dakota	Area Oil & Gas Supervisor P. O. Box 2859 2002 Federal Bldg. & Post Office Casper, WY 82602	Geological Survey Science Center University Vermillion, SD 57069
Tennessee	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Tennessee Department of Conservation G-5 State Office Bldg. Nashville, TN 37219
Texas	Area Oil & Gas Supervisor P. O. Box 26124 505 Marquette Ave., N. W. Albuquerque, NM 87125	Railroad Commission Drawer 12967 Austin, TX 78711
Utah	Area Oil & Gas Supervisor P. O. Box 26124 505 Marquette Ave., N. W. Albuquerque, NM 87125	Division of Oil, Gas and Mining Utah Department of Natural Resources 1588 West North Temple Salt Lake City, UT 84116
Virginia	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Secretary of Commerce and Resources P. O. Box 1475 Richmond, VA 23212
Washington	Area Oil & Gas Supervisor 7211 Federal Bldg. 300 North Los Angeles Street Los Angeles, CA 90012	Oil and Gas Supervisor Department of Natural Resources Olympia, WA 98504

State in which well is located	Jurisdictional Agency for wells on Federal lands	Jurisdictional Agency for wells on Other lands
West Virginia	Area Oil & Gas Supervisor Suite 204 1725 K Street, N. W. Washington, DC 20244	Oil and Gas Division Department of Mines State Capitol Charleston, WV 25305
Wyoming	Area Oil & Gas Supervisor P. O. Box 2859 2002 Federal Bldg. & Post Office Casper, WY 82602	Oil and Gas Conservation Commission Box 2640 Casper, WY 82602

(b) Waiver. In the case of any determination to which a waiver under Subpart C of Part 274 is applicable, "jurisdictional agency" means the Commission.

(c) Federal lands. For purposes of this section, "Federal lands" means

(1) all lands leased under:

(i) the Mineral Lands Leasing Act, as amended, 30 U.S.C. §§ 181 et seq.; and

(ii) the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. §§ 351 et seq.; and

(2) all Indian lands which are under the supervision of the United States Geological Survey (30 CFR Part 221).

(d) Agreements. If the United States Geological Survey and

any state jurisdictional agency enter into an agreement authorizing such state agency to make determinations under Subpart A with respect to wells located on Federal lands, such agreement shall be filed with the Commission. If such an agreement is filed, then such state agency shall be considered the jurisdictional agency with respect to wells on Federal lands in such state to the extent provided in the agreement.

PART 275 - COMMISSION DETERMINATIONS AND REVIEW OF JURISDICTIONAL AGENCY DETERMINATIONS

Subpart A - [Reserved]

Subpart B - Procedure for Commission Review of Jurisdictional Agency Determinations

Sec.
275.201 Publication of notice from jurisdictional agency.
275.202 Commission review of final determinations.
275.203 Protests to the Commission.
275.204 Contents of protests to the Commission.
275.205 Procedure for reopening determinations.
275.206 Confidentiality.

Authority: This part is issued under the National Gas Policy Act of 1978, P.L. 95-621, 92 Stat. 3350.

SUBPART A - [RESERVED]

SUBPART B - PROCEDURE FOR COMMISSION REVIEW OF JURISDICTIONAL AGENCY DETERMINATIONS

§ 275.201 Publication of notice from jurisdictional agency.

Upon receipt of a notice of determination by a jurisdictional agency under § 274.104, the Commission shall publish notice of such determination in the Federal Register. Such notice shall include:

(a) the date on which the jurisdictional agency notice was received;

(b) certain information contained in Part I of the FERC Form No. 121;

(c) a statement that the application and a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent the material is treated as confidential under § 275.206, at the offices of the Commission; and

(d) a statement that persons objecting to the final determination may, in accordance with this subpart, file a protest with the Commission within 15 days after the publication.

§ 275.202 Commission review of final determinations.

(a) Review by Commission. Except as provided in paragraph (b) of this section, a determination submitted to the Commission by a jurisdictional agency shall become final 45 days after the date on which the Commission received notice of the determination, unless within the 45 day period, the Commission:

(1) makes a preliminary finding that:

(i) the determination is not supported by substantial evidence in the record on which the determination was made; or

(ii) the determination is not consistent with information which is contained in the public records of the Commission and which was not part of the record on which the jurisdictional agency made the determination, and

(2) issues written notice of such preliminary finding, including the reasons for the preliminary finding. Copies of the written notice will be sent to the jurisdictional agency which made the determination, to the persons identified in the notice under § 274.104 of such determination, and to any persons who have filed a protest.

(b) Incomplete notice. Notwithstanding the provisions of paragraph (a) of this section, the 45-day period for Commission review of a determination shall not begin if:

(1) the notice forwarded to the Commission pursuant to Subpart A of Part 274 does not contain all the information required in § 274.104(a)(4) and (5); and

(2) the Commission notifies the jurisdictional agency within 45 days after the date on which the Commission receives notice of the determination that the notice is incomplete.

(c) Public notice. The Commission shall publish notice of the preliminary finding in the Federal Register and shall post the notice in its Office of Public Information. The notice shall set forth the reasons for the preliminary finding.

(d) Procedures following notice of preliminary finding. Any state or federal agency or any person may, within 30 days after issuance of the preliminary finding, submit written comments and request an informal conference with the Commission staff. Any jurisdictional agency, any state agency and any person receiving notice under paragraph (a)(2) may request an informal conference with the Commission staff. All timely requests for conferences will be granted. Notice of, and permission to attend, such conferences will be given to persons identified in paragraph (a)(2) and to state or federal agencies or persons who submitted comments under this paragraph.

(e) Commission review. In any case in which a protest was filed with the Commission pursuant to this subpart and a preliminary finding was issued, the Commission will issue a final order within 120 days after issuance of the preliminary finding, either affirming, reversing, or remanding the determination of the jurisdictional agency. Such order shall state the specific basis for the Commission's action. Notice of the issuance of such order shall be given to the jurisdictional agency, to participants in the proceeding before the jurisdictional agency and to participants in the proceeding before the Commission under paragraph (d) of this section and under § 275.203. In the event that the Commission fails to issue a final order within such 120 day period, the determination of the jurisdictional agency shall become final.

§ 275.203 Protests to the Commission.

(a) Who may file. Any person may file a protest with the Commission with respect to a determination of a jurisdictional agency.

(b) Grounds. Protests may be based only on the grounds that the final determination is:

(1) not supported by substantial evidence;

(2) not consistent with information which is contained

in the public records of the Commission and which was not part of the record on which the determination was made;

(3) not consistent with information submitted with the protest for inclusion in the public records of the Commission, which information was not part of the record on which the determination was made; or

(4) not based on an application which complied with the filing requirements set forth in Subpart B of Part 274, or alternative filing requirements approved pursuant to § 274.207.

§ 275.204 Contents of protests to the Commission.

Each protest shall include:

(a) an identification of the determination protested;

(b) the name and address of the person filing the protest;

(c) a statement of whether or not the person filing the protest participated in the proceeding before the jurisdictional agency, and if not, the reason for his nonparticipation;

(d) a statement of the effect the determination will have on the protestor;

(e) a statement of the precise grounds under § 275.203 for the protest, and all supporting documents or references to any information relied on which is in the record on which

the determination is based or is in or to be inserted in the public files of the Commission; and

(f) a statement that the protestor has served, in accordance with §§ 1.17 and 1.51 of this chapter a copy of the protest together with all supporting documents on the jurisdictional agency and all persons who participated in the proceeding before the jurisdictional agency.

§ 275.205 Procedure for reopening determinations.

(a) Grounds. At any time subsequent to the time a determination becomes final pursuant to this subpart, the Commission, on its own motion, or in response to a petition filed by any person aggrieved or adversely affected by the determination, may reopen the determination if it appears that:

(1) in making the determination, the Commission or the jurisdictional agency relied on any untrue statement of material fact; or

(2) there was omitted a statement of material fact necessary in order to make the statements made not misleading, in light of the circumstances under which they were made to the jurisdictional agency or the Commission.

(b) Contents of petition. A petition to reopen the determination proceedings shall contain the following information, under oath:

(1) the name and address of the person filing the petition;

(2) the interest of the petitioner in the outcome of the determination proceeding;

(3) the statement of material fact that is alleged to be untrue or omitted;

(4) a statement explaining why the outcome of the determination proceeding would have been different had the statement or omission not occurred; and

(5) copies of all documents relied on by the petitioner, or references to such documents if they are contained in the public files of the Commission.

(c) Procedures after reopening. In the event the Commission reopens a determination pursuant to this section it shall:

(1) give notice to the jurisdictional agency and all persons who participated, before both that agency and the Commission, in the proceedings resulting in the determination in question;

(2) permit the jurisdictional agency and other persons receiving notice pursuant to subparagraph (1) to submit whatever documentary evidence such agency or persons deem relevant; and

(3) take such other action or hold or cause to be

held such proceedings as it deems necessary or appropriate for a full disclosure of the facts.

(d) Final order of Commission. Within 150 days after issuance of the notice under paragraph (c)(1) of this section, the Commission shall issue a final order. If the Commission finds that the grounds referred to in paragraph (a) of this section exist, it shall vacate the determination, and order refund or other appropriate action, and the right to collect the previously determined maximum lawful price shall terminate.

§ 275.206 Confidentiality.

(a) Except as provided in paragraph (b), the Commission will accord confidential protection to, and not disclose to the public, any information submitted to the Commission by a jurisdictional agency under § 274.104(a)(4), if:

(1) the jurisdictional agency, on its own motion or on request of the applicant, afforded such information confidential treatment before the jurisdictional agency; and

(2) the agency order or the applicant's request stated grounds for confidential treatment which fall within one of the exemptions described in paragraphs (1) through (9) of 5 U.S.C. 552(b).

(b) Upon receipt of a request for disclosure of information treated as confidential under paragraph (a), the Commission will determine in accordance with 5 U.S.C. 552 whether the information is exempt under 5 U.S.C. 552(b). If it determines the information is not exempt, the information will be made public. If it determines that the information is exempt, the Commission will not make it public unless the Commission determines that its conduct of the proceeding to review the jurisdictional agency determination requires making such information available to the public or to particular parties, subject to such conditions (including a protective order) as the Commission may prescribe. Before making any information public under this paragraph, the Commission shall provide at least 10 days notice to the person who submitted the information.

PART 276 - REPORTS

Subpart A - Reports For Sales Of Natural Gas Under Sections 105, 106(b), and 109 Of The NGPA

Sec.
276.101 Reporting entities.
276.102 Existing intrastate contracts.
276.103 Intrastate rollover contracts.
276.104 Other categories of natural gas.
276.105 Elective filing for certain sellers.
276.106 Definition.
276.107 Record retention.

Authority: This part is issued under the Natural Gas Act, as amended, 15 U.S.C. 717 et seq., Energy Supply and Environmental Coordination Act, 15 U.S.C. 791 et seq., Federal Energy Administration Act, 15 U.S.C. 761 et seq., Natural Gas Policy Act of 1978, P.L. 95-621, 92 Stat. 3350, Department of Energy Organization Act, P.L. 95-91, E.O. 12009, 42 F.R. 46267.

SUBPART A - REPORTS FOR SALES OF NATURAL GAS UNDER SECTIONS 105, 106(b), AND 109 OF THE NGPA

§ 276.101 Reporting entities.

(a) General rule. Except as provided in paragraph (b), any person who makes a first sale of natural gas with respect to which a maximum lawful price under section 105, 106(b), or 109 of the NGPA applies, shall file with the Commission reports in accordance with the provisions of this subpart.

(b) Exceptions. (1) Any person who, in the 12 month period which began on December 1, 1977 and ended on November 30, 1978, sold less than a total of

10,000 MMcf of natural gas (including the sales by any affiliate of such person and including all sales whether such sales occurred in inter- or intrastate commerce) may, in lieu of the reports otherwise required under §§ 276.102 and 276.103 of this subpart, elect to make, under oath, the elective filing described in § 276.105 of this subpart.

(2) In the case of a first sale under sections 105 and 106(b) of the NGPA to an interstate pipeline or an intrastate pipeline, the provisions of paragraphs (a) and (b)(1) of this section shall not apply and the reports specified in §§ 276.102 and 276.103 of this subpart shall be filed by the purchasing interstate pipeline or intrastate pipeline. With regard to first sales reported under this subparagraph, the person making the first sale must file an oath statement with the Commission in accordance with §§ 276.102(e) and 276.103(e).

§ 276.102 Existing intrastate contracts.

(a) Any person who makes a first sale of natural gas under an existing intrastate contract shall file with the Commission on March 1, 1979, and annually thereafter, a report in accordance with forms and instructions issued by the Commission which contains:

(1) with respect to each existing intrastate contract under which first sales of natural gas occurred in the reporting period, a statement identifying:

(i) the date the existing intrastate contract, and all successors to the existing intrastate contract, were entered into;

(ii) the contract price on November 9, 1978, (as defined in § 271.504 of Subpart E), if any;

(iii) if the contract price on November 9, 1978, is less than or equal to $2.060 per MMBtu, a copy or summary of the contract price escalator terms, if any;

(iv) the duration of the contract;

(v) the identity of all purchasers under the contract;

(vi) the contract price on December 31, 1984;

(2) a statement under oath to be filed by a responsible official of such person: (i) that to the best of such official's information, knowledge and belief:

(A) all information submitted in the report is true; and

(B) all first sales of natural gas occurring in the reporting period were made in compliance with the maximum lawful prices specified in section 105 of the NGPA and the Commission's regulations under Subpart E of Part 271; and

(ii) that books and records kept and maintained by such person reflect all the information reported pursuant to this section and that such person undertakes to retain such records for a period of 3 years after the expiration of any contract under which any first sales have occurred during the reporting period.

(b) In the case of any report filed with the Commission under this section, the report shall include the volumes sold under each existing intrastate contract during the reporting period, the highest price per MMBtu charged and collected with respect to any sale under each such contract during the reporting period, an identification of the month in which such highest price was charged, and an identification of all contract modifications described in § 271.505(b) of this subchapter executed during the reporting period.

(c) Any person filing annual reports with the Commission under this section may exclude from his report any information which had been previously reported to the Commission under an earlier report filed by such person under paragraph (a) of this section.

(d) An interstate or intrastate pipeline purchasing natural gas under an existing intrastate contract shall file on March 1, 1979, and annually thereafter a report with

the Commission or, in the case of an intrastate pipeline, the appropriate state regulatory agency if a delegation of functions has been made to such state regulatory agency pursuant to Subpart D of Part 274. Such report shall contain the information specified in this section for all purchases by the reporting pipeline under existing intrastate contracts except that, in lieu of the oath filing required under paragraph (a)(2), the reporting pipeline shall make a statement under oath by a responsible official of such pipeline that to the best of such official's information, knowledge and belief all of the information contained in the report is true.

(e) Any person who makes a first sale of natural gas to any interstate or intrastate pipeline under an existing intrastate contract shall file with the Commission by March 1, 1979, and annually thereafter, a statement under oath by a responsible official of such person:

(1) that to the best of such official's information, knowledge and belief, any first sales of natural gas occurring in the reporting period under existing intrastate contracts were made in compliance with applicable maximum lawful prices specified in section 105 of the NGPA and the Commission's regulations under Subpart E of Part 271; and

(2) that books and records kept and maintained by such person reflect all the information required to be reported by the purchasing and reporting pipeline under paragraph (d) of this section and that such person undertakes to retain such records for a period of 3 years after the expiration of any contract under which any first sales have occurred during the reporting period.

§ 276.103 Intrastate rollover contracts.

(a) Any person who makes a first sale of natural gas under an intrastate rollover contract shall file with the Commission on March 1, 1979, and annually thereafter, a report in accordance with forms and instructions issued by the Commission which contains:

(1) with respect to each intrastate rollover contract under which first sales of natural gas occurred in the reporting period, a statement identifying:

(i) the effective date on which first sales began under the intrastate rollover contract;

(ii) identification of the expired contract;

(iii) the identity of all parties to the existing intrastate contract which expired and to the intrastate rollover contract;

(iv) a specification of all changes, if any, in price related terms in the intrastate rollover contract from those price related terms contained in the existing intrastate contract which has expired;

(v) the contract price paid, or which would have been paid, under the existing intrastate contract for the month in which first sales began under the rollover contract;

(vi) the price charged for the month in which first sales began under the intrastate rollover contract; and

(2) a statement under oath to be filed by a responsible official of such person:

(i) that to the best of such official's information, knowledge and belief:

(A) all information submitted in the report is true; and

(B) any first sales of natural gas occurring in the reporting period were made in compliance with the maximum lawful prices specified in section 106(b) of the NGPA and the Commission's regulations under Subpart F of this part;

(ii) that books and records kept and maintained by such person reflect all the information reported pursuant to this section and that such person undertakes to retain such records for a period of 3 years after the expiration of any contract under which any first sales have occurred during the reporting period.

(b) In the case of any report filed with the Commission under this section, the report shall include the volumes sold under each intrastate rollover contract during the reporting period, and the highest price per MMBtu charged and collected for sales of natural gas under each such contract during the reporting period, an identification of the month in which such highest price was charged, and an identification of all contract provisions described in § 271.604(b) of this subchapter executed during the reporting period.

(c) Any person filing annual reports with the Commission under this section may exclude from his report any information which had been previously reported to the Commission under an earlier report filed by such person under paragraph (a).

(d) An interstate or intrastate pipeline purchasing natural gas under an intrastate rollover contract shall file on March 1, 1979, and annually thereafter a report with the Commission or, in the case of an intrastate pipeline, the appropriate state regulatory agency where a delegation of functions has been made to such state regulatory agency pursuant to Subpart D of Part 274. Such report shall contain all of the information specified in this section for

all purchases by the reporting pipeline under intrastate rollover contracts except that, in lieu of the oath filing required under paragraph (a)(2), the reporting pipeline shall make a statement under oath by a responsible official of such pipeline that to the best of such official's information, knowledge and belief all of the information contained in the report is true.

(e) Any person who makes a first sale of natural gas to any interstate or intrastate pipeline under an intrastate rollover contract shall file with the Commission by March 1, 1979, and annually thereafter, a statement under oath by a responsible official of such person:

(1) that to the best of such official's information, knowledge and belief, any first sales of natural gas occurring in the reporting period under intrastate rollover contracts were made in compliance with applicable maximum lawful prices specified in section 106(b) of the NGPA and the Commission's regulations under Subpart E of Part 271; and,

(2) that books and records kept and maintained by such person reflect all the information required to be reported by the purchasing and reporting pipeline under paragraph (d) of this section and that such person undertakes to retain such records for a period of 3 years after

the expiration of any contract under which any first sales have occurred during the reporting period.

§ 276.104 Other categories of natural gas.

A person who makes a first sale of natural gas which qualifies under Subpart I of Part 271 shall file in accordance with forms and instructions issued by the Commission, a report with the Commission on March 1, 1979, and annually thereafter, which contains the following items:

(a) the volumes of natural gas sold in such first sale during the reporting period;

(b) a statement that the natural gas sold in the reporting period was not committed or dedicated to interstate commerce on November 8, 1978; or if such natural gas was so committed or dedicated, a just and reasonable rate was not in effect under the Natural Gas Act on such date for the natural gas (including the basis for such conclusion); and with respect to any natural gas sold in the reporting period which was not committed or dedicated to interstate commerce on November 8, 1978, the natural gas sold in the reporting period is not subject to an existing intrastate contract as defined in § 270.102(b)(8) or intrastate rollover contract as defined in § 270.102(b)(11);

(c) a statement that the natural gas does not qualify for a maximum lawful price under any subpart of Part 271 that is lower than the maximum lawful price permitted under § 271.902;

(d) (1) if the natural gas was committed or dedicated to interstate commerce on November 8, 1978, a statement that a notice of change in rate schedule pursuant to § 154.94 of this chapter has been filed;

(2) if the natural gas was not committed or dedicated to interstate commerce on November 8, 1978, a statement identifying the well, reservoir and acreage from which the the natural gas is produced;

(e) a statement under oath to be filed by a responsible official of such person that to the best of such official's information, knowledge and belief:

(1) all information submitted in the report is true; and

(2) any first sales of natural gas occurring in the reporting period were made in compliance with the maximum lawful prices specified in section 109 of the NGPA and the Commission's regulations under Subpart I of Part 271.

(f) Any person filing annual reports with the Commission under this section may exclude from his report any information which had been previously reported to the Commission under an earlier report filed by such person under this section.

§ 276.105 Elective filing for certain sellers.

(a) Any person described in paragraph (b)(1) of § 276.101 who elects to file an oath statement and undertaking, in lieu of reports otherwise required under §§ 276.102 and 276.103 of this subpart, shall file with the Commission no later than March 1, 1979, and annually thereafter, a statement under oath to be filed by a responsible official of such person:

(1) that such person in the 12 month period which began December 1, 1977, and ended on November 30, 1978, sold less than a total of 10,000 MMcf of natural gas (including the sales by any affiliate of such person and including all sales which occurred both in inter- and intrastate commerce);

(2) that books and records kept and maintained by such person reflect all the information required to be reported under §§ 276.102 and 276.103 of this subpart and that such person undertakes to retain such records for a period of 3 years after the expiration of any contract under which any first sales have occurred in the reporting period;

(3) that to the best of such person's knowledge, information and belief all first sales occurring during the reporting period were made in compliance with the

applicable maximum lawful prices specified in section 105 and 106 of the NGPA and the Commission's regulations under Subparts E and F of Part 271.

(b) Any person filing annual statements with the Commission under this section, beginning with the report to be filed by March 1, 1980, shall only be required to file the information required by paragraphs (a)(2) and (a)(3).

§ 276.106 Definition.

For the purposes of this subpart, the term "reporting period" means:

(a) in the case of the March 1, 1979, report, the period which begins on December 1, 1978, and ends on January 31, 1979; and

(b) in the case of annual reports filed beginning with March 1, 1980, the period which begins on February 1 of the preceding calendar year and ends on January 31 of the reporting year.

§ 276.107 Record retention.

Each person who makes a first sale under section 105, 106(b) or 109 of the NGPA shall maintain such books and records as may be necessary to reflect all the information required to be reported under §§ 276.102, 276.103 or 276.104, or which would be required to be reported but for an election under

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§ 276.105 of this subpart. Such books and records shall be retained for a period of three years after the expiration of any contract under which any first sales have occurred in the reporting period.

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FERC FORM NO. 123 NGPA § 105
INITIAL REPORT-SALES NOT COMMITTED OR DEDICATED UNDER NGA 11-9-78
Regulation § 276.102

Filing Party(Name)_____ (Code) _____ Pipeline Purchaser ☐ First Sales Seller ☐

Sales Identification Codes		Date of	Seller or Purchaser 1/		Contract Price ¢/MMBtu		Contract	Sales Volumes 12-1-79 thru
State	County	Contract	Name	Code	11-9-78 2/	12-31-84	Term (yrs)	1-31-79 Mcf

1/ If more than one report additional name on separate sheet.
2/ If price is less than $2.060/MMBtu, attach copy of summary of contract price escalator terms.

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FERC FORM NO. 124 NGPA § 106(b)
INITIAL REPORT - INTRASTATE ROLLOVER CONTRACT
Regulation § 276.103

Filing Party (Name) _____ (Code) _____ Pipeline Purchaser ☐ Seller ☐

Sales Identification Codes State	County	Expired Contract Date	Seller or Purchaser 1/ Name	Code	Date of New Contract	Sales Comm. Date - New Contract	Last Price Under Expired Contract ¢/MMBtu	Initial Price Under New Contract ¢/MMBtu 2/	Sales Volumes 12-1-78 thru 1-31-79 Mcf

1/ Identify on separate sheet all parties to the existing contract which expired and to the successor contract.
2/ Identify all changes in price resulting from changes in terms contained in the superseded contract.

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FERC FORM NO. _____ NGPA § 105 and 106(b)
ANNUAL REPORT OF SALES OR PURCHASES UNDER
Regulation § 276.102, 276.103

Filing Party (Name) _____ (Code) _____ Pipeline Purchaser ☐ Seller ☐

Sales Identification	Annual Sales Vol. Mcf	Highest Price During Report Period-Month	NGPA Pricing Section

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FERC FORM NO. _____ NGPA §109
INITIAL REPORT-OTHER CATEGORIES OF NATURAL GAS
§ 276.104 of Regulations

Filing Party: _____ Code: _____

API No.	Basis For Qualification	Purchaser	Code	Contract Date	Annual Production (MMcf)	Contract Price ($/MMBtu)	Max. Lawful Price ($/MMBtu)

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SUBCHAPTER I - OTHER REGULATIONS UNDER THE NATURAL GAS POLICY ACT OF 1978

PART 280 - [RESERVED]
PART 281 - [RESERVED]
PART 282 - [RESERVED]
PART 283 - [RESERVED]

PART 284 - CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS

Subpart A - Certain Transportation by Interstate Pipelines

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284.102 Transportation by interstate pipelines.
284.103 Rates and charges.
284.104 Terms and conditions.
284.105 Extensions.
284.106 Reporting requirements.
284.107 Application.

Subpart B - Certain Transportation by Intrastate Pipelines

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284.121 Applicability.
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284.123 Rates and charges.
284.124 Terms and conditions.
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284.128 Definition.

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Subpart D - Assignment of Contractual Rights to Receive Surplus Natural Gas

Sec.
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284.163 Special rule.
284.164 Terms and conditions.
284.165 Filing requirements.

Authority: This part is issued under the Natural Gas Policy Act of 1978, P.L. 95-621, 92 Stat. 3350.

SUBPART A--CERTAIN TRANSPORTATION BY INTERSTATE PIPELINES

§ 284.101 Applicability.

This subpart implements section 311(a)(1) of the NGPA and applies to the transportation of natural gas by interstate pipelines on behalf of:

(a) intrastate pipelines; and

(b) local distribution companies.

§ 284.102 Transportation by interstate pipelines.

(a) General rule. (1) Except as provided in paragraph (b) of this section and subject to the provisions of this subpart, any interstate pipeline, without prior Commission approval, may transport natural gas on behalf of:

(i) any intrastate pipeline; and

(ii) any local distribution company.

(2) Rates charged for transportation under this paragraph may not exceed just and reasonable rates as provided in § 284.103.

(3) Transportation arrangements under this paragraph shall be subject to such further terms and conditions as provided by rule or order of the Commission pursuant to § 284.104.

(4) Transportation arrangements under this paragraph may be extended as provided in § 284.105.

(5) Interstate pipelines engaging in transportation arrangements under this paragraph shall file reports as provided in § 284.106.

(b) Transactions in excess of two years. (1) An interstate pipeline proposing to enter into transactions for the transportation of natural gas on behalf of any intrastate pipeline or local distribution company for a fixed period in excess of two years shall apply to the Commission for prior approval of the transaction.

(2) The interstate pipeline shall apply for approval as provided by § 284.107.

(3) The Commission may, by order, approve or deny an application. An order approving an application shall specify the applicable rates and charges, duration and reporting requirements and such other terms and conditions as the Commission deems appropriate and in the public interest.

§ 284.103 Rates and charges.

(a) Rates and charges for transportation of natural gas by interstate pipelines under § 284.102(a) shall be determined as provided in paragraphs (b) through (d) of this section.

(b) If an interstate pipeline has on file with the Commission a transportation rate schedule applicable to

transportation arrangements under § 284.102(a), the interstate pipeline shall use the rates contained in that schedule.

(c) If an interstate pipeline does not have on file with the Commission a transportation rate schedule applicable to transportation arrangements under § 284.102(a), the interstate pipeline may elect either:

(1) to base its rates upon the methodology and cost used in designing rates to recover the transmission and related storage costs included in its then effective sales rate schedules; or

(2) to use the rates contained in a transportation rate schedule on file with the Commission which the interstate pipeline determines covers service comparable to transportation service under this subpart.

(d)(1) Except as provided in subparagraphs (2) and (3) all revenues received for transportation rendered pursuant to an arrangement under this subpart in excess of an allowance of one cent per Mcf for out-of-pocket expenses shall be credited to Account No. 191 and flowed back to the interstate pipeline's customers.

(2) An interstate pipeline is not required to credit revenues to Account No. 191 pursuant to subparagraph (1):

(i) to the extent revenues attributable to such services fall within representative levels which have been credited in arriving at a test period cost of service; or

(ii) to the extent that volumes transported fall within

representative levels which have been included in billing determinants for the purpose of establishing rates.

(3) An interstate pipeline is not required to credit to Account No. 191 pursuant to subparagraph (1) of this paragraph any amount which it is able to demonstrate, upon application to the Commission, represents actual out-of-pocket expenses in excess of one cent per Mcf.

§ 284.104 Terms and conditions.

(a) Contracts for the transportation of natural gas pursuant to § 284.102(a) shall provide:

(1) that service under the contract shall be conditioned upon the availability of capacity sufficient to provide the service without detriment or disadvantage to the interstate pipeline's existing customers who are dependent on the pipeline's general system supply; and

(2) that the transportation arrangement is subject to the provisions of this subpart.

(b) Transportation arrangements under § 284.102(a) may be for a period not exceeding two years and may be extended as provided in § 284.105.

(c) The Commission may prospectively, by rule or order, impose further terms and conditions as it deems appropriate and in the public interest.

§ 284.105 Extensions.

(a) Interstate pipelines seeking to extend transportation arrangements under § 284.102(a) shall file an extension report as required in § 284.106(c).

(b) If an extension report as required in § 284.106(c) is duly filed, the proposed extension may take effect unless the Commission, prior to the beginning of the proposed extension, and after opportunity for written comments, determines, by order, that the proposed extension is not approved. If the Commission determines, by order, that the proposed extension shall be modified, the extension may take effect only as modified.

(c) Extensions may be for a period not exceeding two years unless otherwise ordered by the Commission.

§ 284.106 Reporting requirements.

(a) Initial report. Within thirty days after commencing transportation under § 284.102(a), an interstate pipeline shall file with the Commission an initial report, under oath, signed by a senior official of the company, containing the following information:

(1) the exact legal name of the interstate pipeline and the name, title and mailing address of the person or persons to whom communications concerning the transportation arrangement pursuant to this subpart should be addressed;

(2) a description of the transportation service, including:

(i) the identity of the parties;

(ii) the dates of commencement and projected termination of the service;

(iii) the estimated total and daily volumes of natural gas to be transported;

(iv) the points between which the natural gas is to be transported; and

(v) the rate to be charged, and with respect to the rate:

(A) if the interstate pipeline is charging a rate contained in a rate schedule under § 284.103(b), the identity of the rate schedule;

(B) if the interstate pipeline is charging a rate computed pursuant to § 284.103(c)(1), an explanation of how the rate is computed; or

(C) if the interstate pipeline is charging a rate contained in a rate schedule under § 284.103(c)(2), a statement of the basis upon which the interstate pipeline determined that the rate schedule used was for comparable service;

(3) a statement that the contract provides that:

(i) service under the contract is conditioned upon the

availability of capacity sufficient to provide the service without detriment or disadvantage to the interstate pipeline's existing customers who are dependent on the pipeline's general system supply; and

(ii) the transportation arrangement is subject to the provisions of this subpart.

(b) Subsequent reports. If any significant change occurs with respect to the information filed under paragraph (a) of this section, the interstate pipeline shall file with the Commission, under oath, signed by a senior official of the company, appropriate amendments to its initial report.

(c) Extension report. Not less than ninety days prior to the expiration of a contract for the transportation of natural gas pursuant to § 284.102(a), an interstate pipeline seeking to extend the transportation arrangement beyond the initial two-year period or any period of extension shall file with the Commission an extension report, under oath, signed by a senior official of the company, stating:

(1) current information with respect to any matters required to be reported under paragraph (a) of this section; and

(2) the proposed terms of the extension.

(d) Final report. Within thirty days after the termination of any transportation arrangement under § 284.102(a), or, if extended, within thirty days after the end of the period of the extension, the interstate pipeline shall file with the Commission a report, under oath, signed by a senior official of the company, stating:

(1) current information with respect to the matters required to be reported under paragraph (a) of this section;

(2) actual total and daily volumes of natural gas transported pursuant to the arrangement; and

(3) total revenues received and a complete statement of the manner in which the revenues were treated.

§ 284.107 Application.

An interstate pipeline seeking Commission approval for a transportation arrangement for any fixed period in excess of two years under § 284.102(b) shall file with the Commission a transportation rate schedule for the transportation service to be provided, and an application, under oath, signed by a senior official of the company, containing the following information:

(a) the exact legal name of the interstate pipeline and the name, title and mailing address of the person or persons to whom communications concerning the transportation arrangement pursuant to this subpart should be

addressed;

(b) a description of the transportation service, including:

(1) the identity of the parties;

(2) the dates of commencement and termination of the service;

(3) the estimated total and daily volumes of natural gas to be transported;

(4) the points between which the natural gas is to be transported;

(c) a statement that the contract provides that:

(1) service under the contract is conditioned upon the availability of capacity sufficient to provide the service without detriment or disadvantage to the interstate pipeline's existing customers who are dependent on the pipeline's general system supply; and

(2) the transportation arrangement is subject to the provisions of this subpart.

SUBPART B - CERTAIN TRANSPORTATION BY INTRASTATE PIPELINES

§ 284.121 Applicability.

This subpart implements section 311(a)(2) of the NGPA and applies to the transportation of natural gas by intrastate pipelines on behalf of interstate pipelines and local distribution companies served by interstate pipelines.

§ 284.122 Transportation by intrastate pipelines.

(a) General rule. (1) Except as provided in paragraph (b) of this section, and subject to the provisions of this subpart, any intrastate pipeline may, without prior Commission approval, transport natural gas on behalf of:

(i) any interstate pipeline; and

(ii) any local distribution company served by an interstate pipeline.

(2) Rates charged for transportation under this subpart may not exceed fair and equitable rates as provided in § 284.123.

(3) Transportation under this paragraph shall be subject to such further terms and conditions as provided by rule or order of the Commission pursuant to § 284.124.

(4) Transportation arrangements under this paragraph may be extended as provided in § 284.125.

(5) Intrastate pipelines engaging in transportation arrangements under this paragraph shall file reports as required by § 284.126.

(b) Transactions in excess of two years. (1) An intrastate pipeline proposing to enter into transactions for the transportation of natural gas on behalf of any interstate pipeline or local distribution company served by an interstate pipeline for a fixed period in excess of two years shall apply to the Commission for prior approval of the transaction.

(2) The intrastate pipeline shall apply for approval as provided in § 284.127.

(3) The Commission may, by order, approve or deny an application. An order approving an application shall specify the applicable rates and charges, duration and reporting requirements and such other terms and conditions as the Commission deems appropriate and in the public interest.

§ 284.123 Rates and charges.

(a) Rates and charges for transportation of natural

gas pursuant to this subpart shall be fair and equitable as determined in accordance with paragraph (b) of this section.

(b)(1) The intrastate pipeline may elect either:

(i) to base its rates upon the methodology and cost used:

(A) in designing rates to recover the cost of gathering treatment, processing, transportation, delivery or similar service (including storage service) included in its then effective firm sales rate schedules for city-gate service on file with the appropriate state regulatory agency; or

(B) in determining the allowance permitted by an appropriate state regulatory agency or for city-gate service by the intrastate pipeline; or

(ii) to use the rates contained in a transportation rate schedule for intrastate service on file with the appropriate state regulatory agency which the intrastate pipeline determines covers service comparable to service under this subpart.

(2) In the case of an intrastate pipeline which does not make an election under subparagraph (1), the intrastate pipeline shall file with the Commission the proposed rates and charges, supported by information showing that the proposed rates and charges are fair and equitable. The intrastate pipeline may commence the

transportation service and charge and collect the proposed rates, subject to refund of amounts which the Commission may, by order, after affording notice and opportunity for the oral presentation of views, data and arguments, and written comments, determine to be in excess of those shown to be fair and equitable or in excess of the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service.

(c) The Commission presumes that all revenues received by an intrastate pipeline in connection with transportation arrangements pursuant to § 284.122(a) and computed in accordance with paragraph (b)(1)(i) or (ii) of this section have been or will be taken into account for purposes of establishing rates charged by the intrastate pipeline for service to intrastate customers.

(d) If the intrastate pipeline is charging a rate computed pursuant to § 284.123(b)(1)(i) or (ii), the rate charged is presumed to be:

(i) fair and equitable; and

(ii) not in excess of the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service.

§ 284.124 Terms and conditions.

(a) Contracts for the transportation of natural gas pursuant to § 284.122(a) shall provide that the transportation arrangement is subject to the provisions of this subpart.

(b) Transportation arrangements pursuant to § 284.122(a) may be for a period not exceeding two years and may be extended for periods not exceeding two years.

(c) The Commission may prospectively, by rule or order, impose further terms or conditions as it deems appropriate and in the public interest.

§ 284.125 Extensions.

(a) An intrastate pipeline seeking to extend a transportation arrangement under § 284.122(a) shall file an extension report as required in § 284.126(c).

(b) If an extension report as required in § 284.126(c) is duly filed, the proposed extension may take effect unless the Commission, prior to the beginning of the proposed extension, and after opportunity for written comments, determines, by order, that the proposed extension is not approved. If the Commission determines, by order, that the proposed extension shall be modified, the extension may take effect only as modified.

§ 284.126 Reporting requirements.

(a) Initial report. Within thirty days after commencing transportation service pursuant to this subpart, an intrastate pipeline shall file with the Commission and the appropriate state regulatory agency an initial report, under oath, signed by a senior official of the company, containing the following information:

(1) the exact legal name of the intrastate pipeline; and the name, title and mailing address of the person or persons to whom communications concerning the transportation arrangement pursuant to this subpart should be addressed;

(2) a general description of the intrastate pipeline's existing operations;

(3) a description of the transportation service, including:

(i) the identity of the parties;

(ii) the dates of commencement and projected termination of the service;

(iii) the estimated total and daily volumes of natural gas to be transported;

(iv) the points between which the gas is to be transported; and

(v) the rate to be charged, and with respect to the rate:

(A) if the intrastate pipeline is charging a rate computed pursuant to § 284.123(b)(1), an explanation of how the rate is computed; or

(B) if the intrastate pipeline is charging a rate contained in a rate schedule under § 284.123(b)(2), a statement of the basis upon which the intrastate pipeline determined that the service provided is comparable to service provided for under the rate schedule; and

(4) a statement that the appropriate state regulatory agency has been notified that the Commission has presumed that all revenues received by an intrastate pipeline in connection with the transportation arrangement pursuant to § 284.122(a) and computed in accordance with § 284.123(b)(1)(i) or (ii), have been or will be taken into account by the appropriate state regulatory agency for purposes of establishing transportation rates for intrastate service.

(b) Subsequent reports. If any significant change occurs with respect to the information filed under paragraph (a) of this section, the intrastate pipeline shall file with the Commission and the appropriate state regulatory agency, under oath, appropriate amendments to

its initial report, signed by a senior official of the company.

(c) Extension report. Not less than 90 days prior to the expiration of a contract for the transportation of natural gas pursuant to this subpart, an intrastate pipeline seeking to extend the transportation arrangement beyond the initial two-year period or any period of extension shall file with the Commission and the appropriate state regulatory agency, under oath, an extension report, signed by a senior official of the company stating:

(1) current information with respect to any matters required to be reported under paragraph (a) of this section; and

(2) the proposed terms of the extension.

(d) Final report. Within thirty days after the termination of any transportation arrangement under § 284.122(a) or, if extended, within thirty days after the end of the period of the extension, the intrastate pipeline shall file with the Commission and with the appropriate regulatory agency a report, under oath, signed by a senior official of the company, providing:

(1) current information with respect to any matters required to be reported under paragraph (a) of this section;

(2) actual total and daily volumes of natural gas transported; and

(3) total revenues received and a complete statement of the manner in which such revenues were treated.

§ 284.127 Application.

An intrastate pipeline seeking Commission approval for a transportation arrangement for any fixed period in excess of two years under § 284.122(b) shall file with the Commission a transportation rate schedule for the transportation service to be provided supported by information showing that the proposed rates and charges are fair and equitable, and an application, under oath, signed by a senior official of the company, containing the following information:

(a) the exact legal name of the intrastate pipeline and the name, title and mailing address of the person or persons to whom communications concerning the transportation arrangement pursuant to this subpart should be addressed;

(b) a description of the transportation service, including:

(1) the identity of the parties;

(2) the dates of commencement and termination of the service;

(3) the estimated total and daily volumes of natural gas to be transported;

(4) the points between which the natural gas is to be transported;

(c) a statement that the contract provides that the transportation arrangement is subject to the provisions of this subpart.

§ 284.128 Definition.

For the purposes of this subpart the term "appropriate state regulatory agency" means a state agency which regulates rates and charges for transportation by the intrastate pipeline on a cost-of-service basis.

SUBPART C - [RESERVED]

SUBPART D - ASSIGNMENT OF CONTRACTUAL RIGHTS TO RECEIVE SURPLUS NATURAL GAS

§ 284.161 Applicability.

This subpart implements section 312 of the NGPA and applies to assignment by any intrastate pipeline to any interstate pipeline or local distribution company of its contractual right to receive surplus natural gas.

§ 284.162 General rule.

Except as provided in § 284.163, no assignment pursuant to this subpart may take place unless the Commission in its discretion approves, by order, an application for assignment filed in accordance with § 284.165(a) upon a determination that the assignment is consistent with the NGPA and this subpart and is necessary or appropriate in the public interest.

§ 284.163 Special rule.

An intrastate pipeline may assign, without compensation, to any interstate pipeline or local distribution company

all or any portion of its contractual right to receive surplus natural gas without prior approval of the Commission, if:

(a) a state agency having regulatory jurisdiction over the intrastate pipeline which would be entitled to receive the natural gas in the absence of the assignment has determined that such natural gas exceeds the then current demands on such pipeline for natural gas;

(b) the price per MMBtu for the natural gas delivered in any month under the contract to be assigned does not and will not exceed an amount equal to the maximum lawful price per MMBtu prescribed under § 271.202; and

(c) the reports required under § 284.165(d) are filed with the Commission within 60 days of the commencement of deliveries under the assignment.

§ 284.164 Terms and conditions.

(a) Upon approval by the Commission of an application for assignment, filed in accordance with § 284.165(a) or in the case of compliance with § 284.162, an intrastate pipeline may assign, without compensation, to any interstate pipeline or local distribution company all or any portion of its contractual right to receive surplus natural gas. Rates charged for any gathering, treatment, processing, transportation, delivery

or similar service (including storage service) performed in connection with an assignment under this subpart shall be computed in accordance with Subpart B of this part.

(b) Upon receipt and review of reports required under § 284.165(e) for assignments without prior Commission approval, the Commission reserves the right, by order to compel termination of the assignment if it determines such termination is required in the public interest.

(c) Any assignment under this subpart shall be subject to any further terms or conditions that the Commission determines prospectively, by rule or order, are appropriate and in the public interest to impose.

§ 284.165 Filing requirements.

(a) An application for authorization of an assignment pursuant to this subpart shall be filed by the intrastate pipeline, under oath, with the Commission, and shall set forth the following information:

(1) a description of the proposed assignment agreement, including:

(i) the identity of the parties;

(ii) the estimated volumes of natural gas, on a total and daily basis;

(iii) the price per MMBtu applicable to volumes to be

delivered pursuant to the assignment and any other terms of the assignment relating to price; and

(iv) the point of delivery;

(2) a copy of the contract which covers the natural gas being assigned as surplus natural gas and any ancillary agreements;

(3) evidence of the determination by the state agency having regulatory jurisdiction over the intrastate pipeline that the quantity of natural gas to be assigned is in excess of the volume of natural gas available to the intrastate pipeline and needed to satisfy then current demands;

(4) an attestation that the particular supplies of natural gas were not committed or dedicated to interstate commerce on November 8, 1978; and

(5) the computation of any rates to be charged pursuant to Subpart B of this part for any gathering, treatment, processing, transportation, delivery or similar service (including storage service) to be performed by the intrastate pipeline under the assignment agreement.

(b) An interstate pipeline or local distribution company to which an intrastate pipeline would make an assignment under this subpart shall file with the Commission a statement, under oath, signed by a senior official of the

company, in support of the application under paragraph (a), that to the best of his knowledge, information and belief the price to be paid for the natural gas under the assignment (exclusive of any rates to be charged pursuant to Subpart B of this part) does not and will not exceed the maximum lawful price applicable to first sales of such gas under the NGPA and Part 271 of this Chapter.

(c) An interstate pipeline to which an intrastate pipeline would make an assignment under this subpart shall, in addition to the statement required under paragraph (a), file, under oath, with the Commission a statement in support of the application under paragraph (a) containing the following:

(1) the extent of curtailment, if any, anticipated to occur in the period in which the natural gas is to be delivered pursuant to the assignment;

(2) the effect which the price of the natural gas is expected to have on the interstate pipeline's average purchased gas cost in the period in which the natural gas is to be delivered pursuant to the assignment; and

(3) the reasons why in the opinion of the interstate pipeline the assignment should be authorized as necessary or appropriate in the public interest.

under an assignment made without prior approval of the Commission pursuant to the special rule in § 284.163, the following information shall be filed, under oath, with the Commission:

(1) by the intrastate pipeline:

(i) a description of the proposed assignment, including:

(A) the identity of the parties;

(B) the volumes of natural gas delivered and estimated to be delivered, on a total and daily basis;

(C) the price per MMBtu applicable to volumes delivered and to be delivered pursuant to the assignment and any other terms of the assignment relating to price; and

(D) the point of delivery;

(ii) a copy of the contract which covers the natural gas being assigned as surplus natural gas and any ancillary agreements;

(iii) evidence of the determination by the state agency having regulatory jurisdiction over the intrastate pipeline that the quantity of natural gas to be assigned is in excess of the volume of natural gas available to the intrastate pipeline and needed to satisfy then current demands;

(iv) an attestation that the particular supplies

(d) Within 60 days of the commencement of deliveries under an assignment made without prior approval of the Commission pursuant to the special rule in § 284.163, the following information shall be filed, under oath, with the Commission:

(1) by the intrastate pipeline:

(i) a description of the proposed assignment, including:

(A) the identity of the parties;

(B) the volumes of natural gas delivered and estimated to be delivered, on a total and daily basis;

(C) the price per MMBtu applicable to volumes delivered and to be delivered pursuant to the assignment and any other terms of the assignment relating to price; and

(D) the point of delivery;

(ii) a copy of the contract which covers the natural gas being assigned as surplus natural gas and any ancillary agreements;

(iii) evidence of the determination by the state agency having regulatory jurisdiction over the intrastate pipeline that the quantity of natural gas to be assigned is in excess of the volume of natural gas available to the intrastate pipeline and needed to satisfy then current demands;

(iv) an attestation that the particular supplies of natural gas were not committed or dedicated to interstate commerce on November 8, 1978; and

(v) the computation of any rates charged or to be charged pursuant to Subpart B of this part for any gathering, treatment, processing, transportation, delivery or similar service (including storage service) performed or to be performed by the intrastate pipeline under the assignment agreement;

(2) by the interstate pipeline or local distribution company to which the assignment is made, a statement under oath, signed by a senior official of the company that to the best of his knowledge, information and belief the price for natural gas under the assignment (exclusive of any rates charged or to be charged pursuant to Subpart B of this part) does not and will not exceed the maximum lawful price applicable to first sales of such gas under the NGPA and Part 271 of this chapter.

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